



# NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

## THESIS

**POLICY SAFEGUARDS AND THE LEGITIMACY OF  
HIGHWAY INTERDICTION**

by

Kevin M. Hood

December 2016

Thesis Co-Advisors:

Lauren Fernandez  
Carolyn Halladay

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<b>REPORT DOCUMENTATION PAGE</b>			<i>Form Approved OMB No. 0704-0188</i>	
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington DC 20503.				
<b>1. AGENCY USE ONLY</b> (Leave blank)		<b>2. REPORT DATE</b> December 2016		<b>3. REPORT TYPE AND DATES COVERED</b> Master's thesis
<b>4. TITLE AND SUBTITLE</b> POLICY SAFEGUARDS AND THE LEGITIMACY OF HIGHWAY INTERDICTION			<b>5. FUNDING NUMBERS</b>	
<b>6. AUTHOR(S)</b> Kevin M. Hood				
<b>7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES)</b> Naval Postgraduate School Monterey, CA 93943-5000			<b>8. PERFORMING ORGANIZATION REPORT NUMBER</b>	
<b>9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES)</b> N/A			<b>10. SPONSORING / MONITORING AGENCY REPORT NUMBER</b>	
<b>11. SUPPLEMENTARY NOTES</b> The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government. IRB number NPS.2016.0135-DD-N				
<b>12a. DISTRIBUTION / AVAILABILITY STATEMENT</b> Approved for public release. Distribution is unlimited.			<b>12b. DISTRIBUTION CODE</b>	
<b>13. ABSTRACT (maximum 200 words)</b>  The strategy of highway interdiction was created to counter the negative consequences of drug trafficking organizations using highways to distribute contraband. Although there have been tangible results, the strategy has also resulted in the unintended consequences of racial profiling and illegal searches. This thesis addresses whether policy safeguards could help minimize improper practices of personnel conducting highway interdiction operations.  This project convened a series of focus groups consisting of 11 state police organizations that provided information on policy safeguards and their purposes. This thesis examines seven major categories of policy safeguards to determine the level of implementation by the state police organizations. In addition, this thesis includes a comparative analysis of the implementation of policy safeguards and the number of personnel complaints filed to determine whether there is any correlation. Although the findings are not conclusive, the analysis identified potential benefits of implementing policy safeguards.				
<b>14. SUBJECT TERMS</b> complaints, effectiveness, implementation, interdiction, legitimacy, profiling, safeguards, strategy, trust, law enforcement			<b>15. NUMBER OF PAGES</b> 131	
			<b>16. PRICE CODE</b>	
<b>17. SECURITY CLASSIFICATION OF REPORT</b> Unclassified	<b>18. SECURITY CLASSIFICATION OF THIS PAGE</b> Unclassified	<b>19. SECURITY CLASSIFICATION OF ABSTRACT</b> Unclassified	<b>20. LIMITATION OF ABSTRACT</b> UU	

NSN 7540-01-280-5500

Standard form 298 (Rev. 2-89)  
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**POLICY SAFEGUARDS AND THE LEGITIMACY OF HIGHWAY  
INTERDICTION**

Kevin M. Hood  
Lieutenant, Virginia State Police  
B.S., Virginia Commonwealth University, 1988

Submitted in partial fulfillment of the  
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES  
(HOMELAND SECURITY AND DEFENSE)**

from the

**NAVAL POSTGRADUATE SCHOOL  
December 2016**

Approved by: Lauren Fernandez  
Thesis Co-Advisor

Carolyn Halladay  
Thesis Co-Advisor

Erik Dahl  
Associate Chair of Instruction  
Department of National Security Affairs

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## **ABSTRACT**

The strategy of highway interdiction was created to counter the negative consequences of drug trafficking organizations using highways to distribute contraband. Although there have been tangible results, the strategy has also resulted in the unintended consequences of racial profiling and illegal searches. This thesis addresses whether policy safeguards could help minimize improper practices of personnel conducting highway interdiction operations.

This project convened a series of focus groups consisting of 11 state police organizations that provided information on policy safeguards and their purposes. This thesis examines seven major categories of policy safeguards to determine the level of implementation by the state police organizations. In addition, this thesis includes a comparative analysis of the implementation of policy safeguards and the number of personnel complaints filed to determine whether there is any correlation. Although the findings are not conclusive, the analysis identified potential benefits of implementing policy safeguards.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

ACLU	American Civil Liberties Union
CALEA	Commission of Accreditation for Law Enforcement Agencies
DEA	Drug Enforcement Administration
DHE	Domestic Highway Enforcement
DOJ	Department of Justice
HIDTA	High Intensity Drug Trafficking Areas
HIP	Highway Interdiction Program
NAACP	National Association for the Advancement of Colored People
ONDCP	Office of National Drug Control Policy

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## EXECUTIVE SUMMARY

The primary responsibility of law enforcement organizations in the United States is the preservation of life in the communities they serve. This responsibility requires law enforcement organizations to deploy resources to identify criminal activity and minimize the negative consequences of crime, including, for example, the trade in and use of illegal drugs. In 2014, there were 120 deaths each day from drug overdoses in the United States.<sup>1</sup> The strategy of highway interdiction was created to counter the drug trafficking organizations using the highway system to distribute contraband throughout the country.

The Drug Enforcement Administration (DEA) developed a program, known as Operation Pipeline, which provided specialized training for law enforcement personnel focusing on identifying individuals trafficking contraband on highways.<sup>2</sup> By the 1990s, law enforcement personnel were conducting traffic stops and producing tangible results through an “all crimes, all threats” approach operating under the guidance of “doing the right things.”<sup>3</sup> The DEA reported law enforcement made 3,232 seizures on the highways in 1994, resulting in “85 tons of marijuana, 23 tons of cocaine, 226 pounds of crack, 26 pounds of heroin, and \$42 million in cash.”<sup>4</sup> However, some law enforcement personnel have engaged in police misconduct associated with racial profiling and illegal searches, and this has negatively affected the lives of citizens.<sup>5</sup> In the meantime, law enforcement leaders have not developed the policy safeguards necessary to guide the actions of law

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<sup>1</sup> Drug Enforcement Administration, *2015 National Drug Threat Assessment Summary* (Washington, DC: Drug Enforcement Administration, 2015), <http://www.dea.gov/docs/2015%20NDTA%20Report.pdf>, v.

<sup>2</sup> Robin S. Engel and Richard Johnson, “Toward a Better Understanding of Racial and Ethnic Disparities in Search and Seizure Rates,” *Journal of Criminal Justice* 34, no. 6 (2006): 609, doi:10.1016/j.jcrimjus.2006.09.014.

<sup>3</sup> White House, “High Intensity Drug Trafficking Areas (HIDTA) Program,” accessed August 13, 2016, <https://www.whitehouse.gov/ondcp/high-intensity-drug-trafficking-areas-program>.

<sup>4</sup> Michael Janofsky, “In War on Drugs, Police Taking to the Highways,” *The New York Times*, March 5, 1995, <http://www.nytimes.com/1995/03/05/us/in-war-on-drugs-police-taking-to-the-highways.html>, sec. U.S.

<sup>5</sup> Michael E. Buerger, “Racial Profiling,” in *21st Century Criminology: A Reference Handbook 21st Century Criminology: A Reference Handbook* (Thousand Oaks, CA: SAGE Publications, Inc., 2009), 744–745.

enforcement personnel conducting highway interdiction operations and to minimize potential problems.

Although law enforcement personnel throughout the nation may be conducting traffic stops in a consistent manner, enforcement operations may not necessarily be supervised in a consistent manner. This thesis answers the question of whether policy safeguards could help minimize improper practices by personnel conducting highway interdiction operations. To answer this question, this project examines the policy safeguards use by law enforcement organizations and their potential to provide guidance to law enforcement personnel conducting highway interdiction operations. To this end, a focus group consisting of 11 state police organizations provided information on policy safeguards implemented by their organization and their purpose for guiding the actions of law enforcement personnel. The focus group examined seven major categories of policy safeguards to determine the level of implementation by each of the state police organizations.

Since the initial deployment of policy safeguards was associated with prosecuting criminal offenses, all of the state police organizations participating in the focus group reported implementing policy safeguards in this area of need. For example, state police organizations implemented measures such as reports and audiovisual recording of traffic stops associated with gathering evidence and documenting the actions of personnel. Beyond this common point, however, the state police organizations participating in the focus group varied with the implementation process.

Law enforcement organizations had not created policy safeguards for highway interdiction from a strategic plan anticipating the deployment of resources to conduct operations. In fact, law enforcement organizations have created and implemented many of the policy safeguards reactively as a mechanism to mitigate identified problems with the strategy of highway interdiction, such as complaints of police misconduct or the public's perception of unfair law enforcement practices.

The President's Task Force on 21st Century Policing highlighted the need for transparency as an essential element for law enforcement organizations to establish the

perception of legitimacy in the community for law enforcement actions.<sup>6</sup> Specifically, transparency in the decision-making process is important to the public's perception of legitimacy for law enforcement organizations participating in highway interdiction operations.<sup>7</sup> Some of the state police organizations participating in the focus group proactively have implemented policy safeguards to demonstrate more transparency in the manner law enforcement personnel conduct highway interdiction operations, specifically documenting the decision-making process during encounters with the public.

Although progress can be demonstrated, there is still more work to be done to obtain the transparency described by the President's Task Force on 21st Century Policing.<sup>8</sup> Currently, the majority of state police organizations participating in the focus group are collecting statistical data associated with law enforcement personnel conducting traffic stops as part of their overall highway interdiction strategy. However, three of the 11 participating state police organizations do not collect any statistical information that would assist with a broader understanding of the actions of personnel. The lack of information weakens the transparency as well as the legitimacy of tactics deployed by law enforcement organizations conducting highway interdiction operations.<sup>9</sup> In addition, two of the eight state police organizations that collect statistical information do not review the data by supervision. This action weakens the law enforcement organization's ability to understand the entirety of its highway interdiction operations and to detect potentially problematic patterns associated with racial profiling.

The policy safeguards implemented by the focus group organizations demonstrated that law enforcement organizations are taking additional steps beyond the requirements of the courts to address the use of discretion by law enforcement personnel conducting highway interdiction operations. Six out of the 11 state police organizations in the focus group have implemented policy safeguards controlling the use of discretion

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<sup>6</sup> President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing* (Washington, DC: Office of Community Oriented Policing Services, 2015), 1.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

in the decision-making process. When law enforcement organizations implement policy safeguards beyond the minimal legal requirements, they are attentive to the concerns of the community about the use of police authority.

One broad problem area is “hit rates.” Hit rates are calculated by dividing the number of law enforcement searches resulting in contraband seized by the total number of vehicles searched.<sup>10</sup> Limited progress has been achieved, with only two state police organization examining hit rates. This function is more closely aligned with the supervision of highway interdiction operations versus the preparation of criminal investigations for prosecution. Furthermore, it is an area that critics of highway interdiction operations have highlighted as empirical proof that law enforcement personnel are ineffective at identifying suspicious behavior for criminal activity; critics argue higher hit rates would correlate with higher rates of seizure and arrest.<sup>11</sup> This topic has not been thoroughly explored by leadership of highway interdiction programs to establish a better understanding of what defines a successful highway interdiction stop versus simply relying on whether or not contraband was seized.

The lack of consistency in applying policy safeguards, such as hit rate calculations, hampers the ability of law enforcement organizations to thoroughly comprehend the effectiveness of highway interdiction as a strategy. Instead, law enforcement organizations rely on personnel complaints to identify problematic patterns associated with the behavior of personnel conducting enforcement operations.<sup>12</sup> Can law enforcement organizations reduce the number of personnel complaints for personnel conducting highway interdiction operations through the implementation of policy safeguards?

This thesis includes a comparative analysis between policy safeguards implemented and the number of personnel complaints filed to determine if a correlation

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<sup>10</sup> Stephen K. Rice and Michael D. White, eds., *Race, Ethnicity, and Policing: New and Essential Readings* (New York: New York University Press, 2010), 193.

<sup>11</sup> Buerger, “Racial Profiling,” 741.

<sup>12</sup> International Association of Chiefs of Police, *Building Trust Between the Police and the Citizens They Serve* (Washington, DC: Office of Community Oriented Policing Services), 32.

could be identified. Six of the state police organizations participating in the focus group discussions provided statistical data associated with personnel complaints for racial profiling, illegal searches, and rudeness. Only two of the state police organizations had a lower number of complaints per individual assigned to the organization's highway interdiction program as compared to the rest of the organization.

A stronger argument for the benefits of implementing policy safeguards begins with an analysis of the number of times a state police organization exceeded the average percentage for implementation. The two state police organizations with lower number of personnel complaints filed against per individual assigned to the organization's highway interdiction program were the only organizations to exceed the average implementation at least six times. None of the state police organizations with a higher number of personnel complaints filed against per individual assigned to their highway interdiction program achieved this standard. Although the findings for the implementation of policy safeguards are supportive to the effectiveness of highway interdiction by minimizing the number of personnel complaints filed against personnel, they were not conclusive.

Due to the disparity of implementation in policy safeguards for law enforcement organizations accompanied with the lack of a standard to evaluate their effectiveness, a champion for the strategy of highway interdiction must be identified. The Domestic Highway Enforcement (DHE) initiative under the umbrella of the High Intensity Drug Trafficking Area (HIDTA) is in the best position to advocate for the implementation of policy safeguards associated with the national strategy of highway interdiction. The DHE initiative, in a collaborative partnership with community leaders and leadership of highway interdiction programs, can provide the neutral perspective needed for open and honest conversation while still understanding the technical aspects associated with specialized units conducting highway interdiction. The standardization of policy safeguards for highway interdiction programs throughout the country will help establish more transparency and understanding of tactics used by personnel to identify and minimize the negative effects of criminal activity.

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## **ACKNOWLEDGMENTS**

It is with sincere gratitude that I thank Dr. Lauren Fernandez for the encouraging words about undertaking a thesis on highway interdiction. A project of this magnitude can never be accomplished without the support and dedication from a team of individuals that is beyond my ability to mention them all.

I would like to start with thanking my organization and Colonel W. Steven Flaherty, superintendent of the Virginia State Police, for allowing me to participate in this program. My coworkers worked diligently to help me be successful by completing additional duties that allowed me to be out of the office and concentrate on my thesis. Their enthusiastic support was beyond my expectations and sincerely appreciated.

The entire Naval Postgraduate School staff demonstrated an interest in my success and steadfastly worked to provide me with the tools necessary to complete my thesis. I will forever be indebted to the staff for the professional manner they completed their tasks. Thank you! I would especially like to thank Dr. Carolyn Halladay and Dr. Fernandez for their wisdom and guidance as thesis advisors, which allowed me to expend my knowledge to learn more about highway interdiction.

I would like to thank the members of the focus group who contributed their knowledge, experience, and suggestions for improving highway interdiction. Without their participation, this thesis would not have been completed. Thank you! I would also like to thank the members of cohorts 1503/1504. I will never forget the words of encouragement during stressful times and will forever treasure our friendships.

I would like to dedicate this thesis to the memory of Trooper Chad P. Dermeyer, who was killed in the line of duty on March 31, 2016, while conducting an interdiction operation in Richmond, Virginia. Chad took particular pride in being assigned to a highway interdiction program and was a true professional striving to achieve his best. He possessed a unique ability to connect with people and worked to help anyone in need. In simple words, he cared. His sacrifice will never be forgotten and gave me the strength to continue with the NPS program during a difficult time.

Finally, I would like to thank my wife, Paula Hood, for her support throughout this endeavor. She endured long nights waiting for me to complete assignments and selflessly worked to keep our lives moving forward. Her love, support, and encouragement will forever be treasured. Thank you for everything over the last two years. To my children, Colin, Brendan, and Erin, I sincerely appreciate your love and support that allowed me to miss family events. I can never repay your understanding.

## I. INTRODUCTION

Law enforcement agencies throughout the nation conduct highway interdiction operations designed to identify individuals with nefarious intentions. This practice emerged in the 1980s as a result of the nation's "War on Drugs," when law enforcement agencies began deploying specialized personnel to look beyond the initial traffic violation for indicators of criminal activity.<sup>13</sup>

The Drug Enforcement Administration (DEA) developed a program, known as Operation Pipeline, which provided specialized training for law enforcement personnel focusing on identifying individuals trafficking contraband on highways.<sup>14</sup> Operation Pipeline and similar programs initiated by other agencies resulted in the arrest of individuals engaged in a variety of criminal activities, such as distribution of narcotics, human trafficking, and terrorism. By the 1990s, highway interdiction in the form of traffic stops was producing tangible criminal arrests that enhanced the nation's security and addressed public safety concerns against drug trafficking organizations.<sup>15</sup> The DEA reported that 3,232 seizures were conducted on the highways in 1994 resulting in "85 tons of marijuana, 23 tons of cocaine, 226 pounds of crack, 26 pounds of heroin, and \$42 million in cash."<sup>16</sup>

Highway interdiction has proven to be a successful law enforcement strategy for identifying criminal activity and contributing to the overall security of our nation. For example, in 1995, an Oklahoma Highway Patrolman stopped a Mercury Marquis on

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<sup>13</sup> Robin S. Engel and Richard Johnson, "Toward a Better Understanding of Racial and Ethnic Disparities in Search and Seizure Rates," *Journal of Criminal Justice* 34, no. 6 (2006), 609, doi:10.1016/j.jcrimjus.2006.09.014.

<sup>14</sup> Ibid.

<sup>15</sup> Kami Chavis Simmons, "Beginning to End Racial Profiling: Definitive Solutions to an Elusive Problem," *Washington & Lee Journal of Civil Rights and Social Justice* 18, no. 1 (2011): 26. 25–54.

<sup>16</sup> Michael Janofsky, "In War on Drugs, Police Taking to the Highways," *The New York Times*, March 5, 1995, <http://www.nytimes.com/1995/03/05/us/in-war-on-drugs-police-taking-to-the-highways.html>, sec. U.S.

Interstate 35 for failing to display a license plate.<sup>17</sup> During the encounter, Trooper Charlie Hanger became suspicious of the driver's actions and began to investigate.<sup>18</sup> The driver turned out to be Timothy McVeigh, a terrorist who had recently bombed the Alfred P. Murrah Federal Building, killing 168 people.<sup>19</sup> Hanger spotted an illegal concealed weapon on McVeigh's person—the .45 caliber Glock was later found to be loaded with particularly lethal Black Talon rounds—and arrested the bomber.<sup>20</sup> When federal investigators turned their focus to McVeigh, they found him in the Noble County Jail, thanks to the highway interdiction stop.<sup>21</sup>

Other contributions to the nation's security includes numerous contraband seizures conducted each year by law enforcement—for example, five kilograms of cocaine was seized on Interstate 85 in 2001 when the driver was stopped for speeding by the South Carolina Highway Patrol Advanced Criminal Enforcement (ACE) Team.<sup>22</sup> The investigation was pursued by the DEA, and with additional investigative efforts, the result was 38 additional kilogram of cocaine, 20 pounds of marijuana, and \$10,000 in currency; the total was more than \$3.8 million in contraband and assets seized.<sup>23</sup>

By 2006, the Office of National Drug Control Policy (ONDCP) had established the Domestic Highway Enforcement (DHE) initiative to implement a national strategy for

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<sup>17</sup> Stephen Braun, "Trooper's Vigilance Led to Arrest of Blast Suspect: Bombing: Charlie Hanger's Suspicions about the Man He Nabbed during a Traffic Stop Turned out to Be Justified," *Los Angeles Times*, April 22, 1995, [http://articles.latimes.com/1995-04-22/news/mn-57433\\_1\\_charlie-hanger](http://articles.latimes.com/1995-04-22/news/mn-57433_1_charlie-hanger).

<sup>18</sup> Ibid.

<sup>19</sup> Joe Davidson, "Oklahoma City Bombing Still Sears Federal Workers," *The Washington Post*, April 20, 2015, <http://www.washingtonpost.com/blogs/federal-eye/wp/2015/04/20/oklahoma-city-bombing-still-sears-federal-workers/>.

<sup>20</sup> Dan Marcou, "Police History: How Trooper Charlie Hanger Caught the Oklahoma City Bomber," *PoliceOne*, April 17, 2015, <https://www.policeone.com/police-history/articles/8527487-Police-History-How-Trooper-Charlie-Hanger-caught-the-Oklahoma-City-bomber/>.

<sup>21</sup> Ibid.

<sup>22</sup> South Carolina Department of Public Safety, "Two Separate Highway Patrol Traffic Stops Result in Seizure of Drugs and Money Worth More Than \$4.4 Million," press release, April 26, 2001, <http://www.scdps.gov/oea/nr2001/042601b.html>.

<sup>23</sup> Ibid.

law enforcement organizations participating in highway interdiction.<sup>24</sup> The goal was to establish a partnership for “collaborative, intelligence-led policing to enhance coordinated, multi-jurisdictional operational law enforcement efforts on interstate highways specifically identified as drug trafficking corridors.”<sup>25</sup> Participating organizations, such as the Texas Department of Public Safety, reported that drug trafficking organizations actively use our nation’s highways to transport all sorts of contraband—drugs, weapons, illegal profits, and so on.<sup>26</sup> In 2011, the DHE initiative reported statistical information to Congress asserting that \$377 million worth of contraband and other valued assets had been seized from the highways of the United States associated with the initiative.<sup>27</sup>

In 2011, approximately 21.2 million people were stopped by law enforcement for a major or minor violations “while operating a motor vehicle,” resulting in a substantial number of contacts, beyond the original violation, between law enforcement and individuals potentially involved in criminal activity.<sup>28</sup> At times, law enforcement personnel were proactively engaging these drivers and attempting to identify indicators of criminal activity. Requests for consent to search vehicles emerged as a primary tactic deployed by law enforcement during highway stops to discover contraband and other evidence of criminal activity.<sup>29</sup>

This tactic was supported in opinions connected with rulings of cases heard in the courts. In 1991, the U.S. Supreme Court reviewed aspects of consensual searches, and Chief Justice William Rehnquist wrote in the opinion for *Florida v. Jimeno*, “We have

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<sup>24</sup> Executive Office of the President, Office of National Drug Control Policy, *High Intensity Drug Trafficking Areas Program Report to Congress* (Washington, DC: Executive Office of the President, 2011), [https://www.whitehouse.gov/sites/default/files/ondcp/policy-and-research/hidta\\_2011.pdf](https://www.whitehouse.gov/sites/default/files/ondcp/policy-and-research/hidta_2011.pdf), 6.

<sup>25</sup> *Ibid.*

<sup>26</sup> Texas Department of Public Safety, *Agency Strategic Plan, 2009–2013* (Austin, TX: Texas Department of Public Safety, 2009), <http://www.txdps.state.tx.us/dpsStrategicPlan/2009-2013/11astrategicoutlookall.pdf>, 72.

<sup>27</sup> Executive Office of the President, *High Intensity Drug Trafficking Areas*, 6.

<sup>28</sup> Lynn Langton and Matthew Durose, *Police Behavior during Traffic and Street Stops, 2011* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2013), 3.

<sup>29</sup> Jacinta M. Gau, “Consent Searches as a Threat to Procedural Justice and Police Legitimacy: An Analysis of Consent Requests During Traffic Stops,” *Criminal Justice Policy Review* 24, no. 6 (2012): 6, doi: 10.1177/0887403412464547.

long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so.”<sup>30</sup> While studying racial profiling and vehicle searches, researchers Patricia Warren and Donald Tomaskovic wrote, “The Supreme Court has ruled that consent searches are an important part of police investigatory work, reasoning that officers must have some discretionary power to control crime effectively.”<sup>31</sup>

## **A. RESEARCH QUESTIONS**

How effective are law enforcement policy safeguards in minimizing improper practices by highway interdiction operations personnel? Do these safeguards contribute to the effectiveness of highway interdiction?

## **B. PROBLEM STATEMENT**

Allegations began to surface concerning the tactics employed by law enforcement performing highway interdiction operations. In 1992, Robert Wilkins was stopped by the Maryland State Police resulting in a vehicle search for 30 minutes that did not produce any evidence of criminal activity.<sup>32</sup> A lawsuit, filed by Robert Wilkins, alleged he experienced civil rights violations during the traffic stop.<sup>33</sup> As a result, the Maryland State Police settled the lawsuit for “just under one hundred thousand dollars and an agreement that the agency would maintain computer records regarding all motorists stopped.”<sup>34</sup> The effectiveness of highway interdiction as a legitimate law enforcement tactic has come under sustained question for various reasons. Minority communities and civil rights organizations have raised concerns that law enforcement personnel bring a

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<sup>30</sup> 500 U.S. 248 at 250-251.

<sup>31</sup> Patricia Y. Warren and Donald Tomaskovic-Devey, “Racial Profiling and Searches: Did the Politics of Racial Profiling Change Police Behavior?,” *Criminology & Public Policy* 8, no. 2 (2009): 357, doi:10.1111/j.1745-9133.2009.00556.x.

<sup>32</sup> Kenneth Meeks, *Driving while Black: Highways, Shopping Malls, Taxi Cabs, Sidewalks: How to Fight Back If You Are a Victim of Racial Profiling*, 1st ed. (New York: Broadway Books, 2000), 21–24.

<sup>33</sup> Stephen K. Rice and Michael D. White, eds. *Race, Ethnicity, and Policing: New and Essential Readings* (New York: New York University Press, 2010), 162.

<sup>34</sup> Ibid.

culture of bias when interacting with minorities.<sup>35</sup> This concern includes law enforcement personnel conducting enforcement operations by stopping minority drivers and disproportionately subjecting them to vehicle searches.<sup>36</sup> Organizations, such as the American Civil Liberties Union (ACLU), support accusations of racial profiling by initiating lawsuits against law enforcement organizations suspected of participating in the practice.<sup>37</sup> Racial profiling, “the stopping or searching vehicles and drivers based primarily on race, rather than any suspicion or observed violation of the law,”<sup>38</sup> prompted Department of Justice (DOJ) to determine the validity of accusations for racial profiling.<sup>39</sup>

In 1998, two New Jersey state troopers were involved in a use-of-force incident with four minority young men that resulted in three of them being shot.<sup>40</sup> In 2003, a civil suit was filed against the Maryland State Police alleging that minority drivers were singled out for vehicle searches at a greater rate than white drivers.<sup>41</sup> In addition, the DOJ analyzed data associated with the New Jersey and Maryland State Police organizations, and its findings supported accusations of racial profiling.<sup>42</sup> Members of the minority community have expressed concerns that law enforcement personnel were targeting them for “Driving While Black—stopping, questioning, and even searching black drivers who have committed no crime, based on the excuse of a traffic offense.”<sup>43</sup>

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<sup>35</sup> Sherrilyn Ifill, *Statement by the NAACP Legal Defense and Educational Fund, Inc. before the President’s Task Force on 21st Century Policing* (New York: NAACP Legal Defense and Educational Fund, 2015), [http://www.naacpldf.org/files/case\\_issue/Sherrilyn%20Ifill%20Testimony-Task%20Force%20on%2021st%20Century%20Policing.pdf](http://www.naacpldf.org/files/case_issue/Sherrilyn%20Ifill%20Testimony-Task%20Force%20on%2021st%20Century%20Policing.pdf), 5.

<sup>36</sup> Rice and White, *Race, Ethnicity, and Policing*, 264.

<sup>37</sup> Meeks, *Driving while Black*, 33.

<sup>38</sup> Donald Tomaskovic-Devey and Patricia Warren, “Explaining and Eliminating Racial Profiling,” *Contexts* 8, no. 2 (2009): 35, doi:10.1525/ctx.2009.8.2.34.

<sup>39</sup> Michael E. Buerger, “Racial Profiling,” in *21st Century Criminology: A Reference Handbook 21st Century Criminology: A Reference Handbook*, ed. J. Mitchell Miller (Thousand Oaks, CA: SAGE Publications, Inc., 2009), 744–745.

<sup>40</sup> *Ibid.*, 744.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*, 744–745.

<sup>43</sup> Rice and White, *Race, Ethnicity, and Policing*, 5.

Researchers focused on consensual searches of vehicles in which law enforcement personnel exercise a considerable amount of discretion when deciding which vehicles to search.<sup>44</sup> The driver's consent obviates the legal requirement for law enforcement personnel to justify the request.<sup>45</sup> Proponents of highway interdiction advocate that arrests from consensual searches are a combination of experience and observations by law enforcement personnel supported by court convictions.<sup>46</sup> Individuals opposed to consent searches identify the low hit rates as empirically proof that highway interdiction is not an effective strategy and "little more than a blind squirrel stumbling across an acorn by chance."<sup>47</sup> The results spell trouble beyond an inconvenienced driver. Jacinta M. Gau concluded that individuals subjected to consent searches without the discovery of evidence of criminality are more likely to view the actions of law enforcement during the encounter as improper.<sup>48</sup>

Moreover, Dr. Katherine Y. Barnes has noted the low percentage of vehicle stops that actually result in contraband seizures, which suggests that the indicators on which law enforcement personnel rely to identify individuals with contraband are not accurate or especially helpful.<sup>49</sup> To be sure, other theorists advocate for these criminal indicators as a legitimate tool for law enforcement personnel who have developed them from patterns identified in criminal investigations and observations.<sup>50</sup> Researchers, such as Michael E. Buerger, argue that hit rates based exclusively on drug violations do not accurately reflect the success of highway interdiction practices.<sup>51</sup> After all, any number of serious but non-drug related criminal violations can be identified in a traffic stop, for example: murder, human trafficking, or terrorism. Although this thesis does not explore

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<sup>44</sup> Scott Henson, *Flawed Enforcement* (Austin, TX: American Civil Liberties Union of Texas, 2004), <https://www.aclu.org/sites/default/files/FilesPDFs/flawed%20enforcement.pdf>, 8.

<sup>45</sup> *Ibid.*, 3.

<sup>46</sup> Buerger, "Racial Profiling," 741.

<sup>47</sup> *Ibid.*

<sup>48</sup> Gau, "Consent Searches as a Threat," 6.

<sup>49</sup> Katherine Y. Barnes, "Assessing the Counterfactual: The Efficacy of Drug Interdiction Absent Racial Profiling," *Duke Law Journal* 54, no. 5 (2005): 1134.

<sup>50</sup> Buerger, "Racial Profiling," 741.

<sup>51</sup> *Ibid.*, 746.

the validity of criminal indicators used by law enforcement personnel for highway interdiction, it is important to note that extensive research has been conducted on the subject identifying “racial differences in suspect demeanor can affect outcomes in police-citizen interactions.”<sup>52</sup> Law enforcement personnel conducting highway interdiction operations should be aware of this potential influence when determining appropriate actions during a traffic stop.

The credibility of law enforcement organizations is under siege as communities continue to express concerns associated with unfair treatment and exposure to police misconduct. The frustration of the minority community about its relationship with the law enforcement profession can be illustrated by the testimony provided by the National Association for the Advancement of Colored People (NAACP) to the President’s Task Force on 21<sup>st</sup>-Century Policing.<sup>53</sup> Sherrilyn Ifill, President and Director Counsel for the NAACP Legal Defense and Education Fund, characterizes the relationship between law enforcement personnel and black communities as a “longstanding problem of police abuse and excessive force.”<sup>54</sup> Psychologists researching reactions to racial profiling from minority individuals in Washington, DC neighborhoods discovered that minorities had feelings of “anger, powerlessness, and stigmatization” when subjected to suspicion of criminal activity by law enforcement personnel using race as an indicator.<sup>55</sup>

Polls conducted by Gallup, Inc. over the years have monitored how individuals felt concerning the treatment of black members from the minority community at the hands of law enforcement during stops for traffic violations.<sup>56</sup> As shown in Table 1, the results indicate that a significant portion of the population, regardless of race, felt that black members of their community were being “treated less unfairly than whites.”<sup>57</sup> In

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<sup>52</sup> Rice and White, *Race, Ethnicity, and Policing*, 197–198.

<sup>53</sup> Ifill, *Statement by the NAACP*, 2.

<sup>54</sup> Ibid.

<sup>55</sup> Patrick Ibe, Charles Ochie, and Evaristus Obiyan, “Racial Misuse of ‘Criminal Profiling’ by Law Enforcement: Intentions and Implications,” *African Journal of Criminology and Justice Studies* 6, no. S1 & 2 (2012): 187.

<sup>56</sup> Gallup Inc, “Race Relations,” accessed July 13, 2016, <http://www.gallup.com/poll/1687/Race-Relations.aspx>.

<sup>57</sup> Ibid.

addition, the vast majority of black adults expressed opinions that the black community was being treated unfairly.<sup>58</sup>

Table 1. Treatment by Law Enforcement<sup>59</sup>

	Yes, Treated Less Fairly	No, not Treated Less Fairly	No Opinion
	%	%	%
National adults			
2015 Jun 15–Jul 10	43	54	3
2007 Jun 4–24	37	55	8
2004 Jun 9–30	38	53	9
2002 Dec 9–2003 Feb 11	39	50	11
2001 Mar 23–May 16	39	51	10
1999 Sep 24–Nov 16	35	54	11
1998 Aug 13–Oct 26	33	57	10
1997 Jan 4–Feb 28	34	51	15
Whites			
2015 Jun 15–Jul 10	34	63	3
2007 Jun 4–24	31	60	9
2004 Jun 9–30	32	59	9
2002 Dec 9–2003 Feb 11	35	54	11
2001 Mar 23–May 16	35	54	11
1999 Sep 24–Nov 16	30	59	11
1998 Aug 13–Oct 26	29	61	10
1997 Jan 4–Feb 28	30	54	16

<sup>58</sup> Ibid.

<sup>59</sup> Adapted from: Gallup Inc, “Race Relations.”

	Yes, Treated Less Fairly	No, not Treated Less Fairly	No Opinion
Blacks			
2015 Jun 15–Jul 10	73	26	2
2007 Jun 4–24	73	24	4
2004 Jun 9–30	66	28	6
2002 Dec 9–2003 Feb 11	69	27	4
2001 Mar 23–May 16	66	30	4
1999 Sep 24–Nov 16	64	31	5
1998 Aug 13–Oct 26	55	38	7
1997 Jan 4–Feb 28	60	33	7
Hispanics			
2015 Jun 15–Jul 10	54	42	4
2007 Jun 4–24	51	42	6
2004 Jun 9–30	47	45	8

The deterioration of the relationship between the law enforcement profession and the minority community has persisted for so long that minority parents feel the need to protect their children by having a conversation commonly referred to as “the talk.”<sup>60</sup> When minority children reach the age to obtain a driver’s license, parents openly discuss concerns about law enforcement racially profiling minority drivers and the potential for the contact to escalate into a life-threatening situation.<sup>61</sup>

In a dissenting opinion for *Utah v. Strieff*, U. S. Supreme Court Justice Sonia Sotomayor acknowledged “the talk,” proclaiming minority parents of “black and brown” skin have undertaken conversations with children for generations associated with fears of how law enforcement with guns will interact with their children, “instructing them never

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<sup>60</sup> Center for Government and Public Affairs, Auburn University Montgomery, *Bias-based Policing: A Study for the Commonwealth of Virginia* (Montgomery, AL: Center for Government and Public Affairs, Auburn University Montgomery, 2004), 83.

<sup>61</sup> *Ibid.*

to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger.”<sup>62</sup> She gave voice to a feeling of being “degraded” when law enforcement personnel extend their interaction with individuals while looking for criminal activity beyond the initial justification for the contact.<sup>63</sup> The current state of the relationship between law enforcement and the minority community is problematic. In order for law enforcement officers to be viewed as a legitimate force to maintain order and administer justice, their actions must be interpreted as fair in the eyes of the community.<sup>64</sup>

Critics of highway interdiction also have challenged the true motivation of law enforcement organizations that conduct such operations. Specifically, detractors claim that highway interdiction is more about making money than making the highway safe.<sup>65</sup> Indeed in 2004, the ACLU identified task forces in Texas that were seizing assets of such value that the confiscated property could sustain the task force’s operational budget for the year—even though the task forces demonstrated a relatively low “hit rate” of converting traffic stops into asset forfeiture seizures.<sup>66</sup> Some representatives of government authority have publicly expressed desires to compensate for budgetary shortages by implementing an interdiction program, further complicating the public view of highway interdiction.<sup>67</sup>

Personnel conducting highway interdiction may work without a dedicated supervisor monitoring their actions. The lack of supervision is particularly problematic when law enforcement organizations participate in task forces conducting highway interdiction.<sup>68</sup> Organizations contribute personnel to the task force but do not retain direct

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<sup>62</sup> Supreme Court of the United States, *Utah v. Strieff* 579 U.S. (2016), 12.

<sup>63</sup> *Ibid.*, 10.

<sup>64</sup> Gau, “Consent Searches as a Threat,” 2.

<sup>65</sup> Henson, *Flawed Enforcement*, 6.

<sup>66</sup> *Ibid.*, 15.

<sup>67</sup> Courtney Flynn, “Local Police Officials Warn against Drug Interdiction Team in Chesterfield,” *The Voice*, September 23, 2013, <http://voicenews.com/articles/2013/09/23/news/doc523c910b42e4608664965.txt>.

<sup>68</sup> Henson, *Flawed Enforcement*, 4.

control over the actions of their participating member(s) from other departments.<sup>69</sup> Problems can emerge if a supervisor does not adequately monitor the actions of personnel to recognize patterns associated with racial profiling or other improper behavior by subordinates.<sup>70</sup>

Still, amid the controversies about highway interdiction, the need for such a strategy remains as great as it was when Trooper Hanger pulled over Timothy McVeigh. The 2015 *National Drug Threat Assessment* reported that 120 people died in the United States each day in 2014 from a drug overdoses.<sup>71</sup> Law enforcement organizations need strategies such as highway interdiction to help combat drug trafficking organizations smuggling dangerous drugs into communities. Foreign and domestic terrorists are using the nation's highway systems to further their plots and commit nefarious acts to harm individuals, as do human traffickers, bank robbers, kidnappers, murderers, and serial killers. When law enforcement stops these individuals traveling on the highway, each contact is opportunity for law enforcement to produce information or evidence associated with criminal activity. Our democracy was built on a foundation of trust between citizens and government authorities who are responsible for protecting them and serving the needs of the community.<sup>72</sup> As such, a reassessment of highway interdiction is in order. The leadership of law enforcement organizations must seek opportunities designed to ensure the community views their actions as fair.

### C. RESEARCH DESIGN

In the case of gathering statistical information associated with traffic stops, all law enforcement organizations do not gather the same information in compliance with a policy safeguard or simply do not gather any information. When discussing statistical

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<sup>69</sup> Ibid.

<sup>70</sup> Kirk Miller, "The Institutionalization of Racial Profiling Policy: An Examination of Antiprofiling Policy Adoption among Large Law Enforcement Agencies," *Crime & Delinquency* 59, no. 1 (2013): 33, doi:10.1177/0011128708328863.

<sup>71</sup> Drug Enforcement Administration, *2015 National Drug Threat Assessment Summary* (Washington, DC: Drug Enforcement Administration, 2015), <http://www.dea.gov/docs/2015%20NDTA%20Report.pdf>, v.

<sup>72</sup> President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing* (Washington, DC: Office of Community Oriented Policing Services, 2015), 5.

data associated with police shootings, Chief Charles H. Ramsey of the Philadelphia Police Department stated, “If you don’t have the data, people think you are hiding something. This position is something that comes under the header of establishing trust.”<sup>73</sup> The variance in policy safeguards can affect how members of communities view the legitimacy of the actions of law enforcement personnel.

This thesis examines the idea that policy safeguards can guide the actions of highway interdiction personnel. To this end, it uses a policy analysis method. Additionally, the researcher convened a focus group of 11 individuals supervising state police highway interdiction operations for an open discussion of policy safeguards implemented by their organization to identify operational practices.

#### **D. SELECTION**

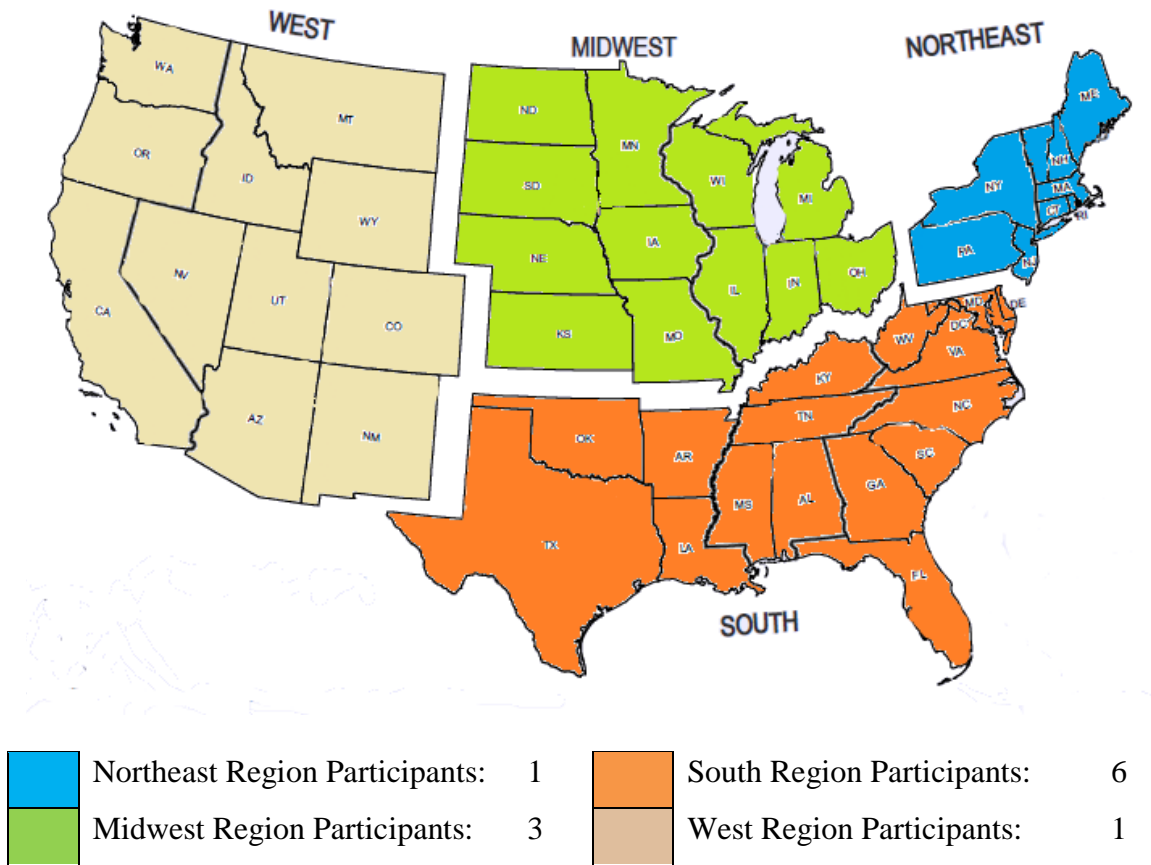
The selection of law enforcement organizations to participate was restricted to organizations with specialized teams designed to conduct highway interdiction operations and that have created policies specific to those operations. The participation was also restricted to state police organizations participating in the DHE initiative. These organizations were selected because the DHE initiative encourages information sharing as part of a national collaborative effort, and they have demonstrated their willingness to share information in the past. The participation in the comparative analysis associated with policy safeguards was further restricted to state police organizations since these organizations typically have the same primary responsibility of highway patrol.

As illustrated in Figure 1, the continental United States was divided into four regions to identify participation without narrowing the attention to a specific state police organization, allowing the focus to remain on the strategy of highway interdiction operations. Each state police organization was randomly assigned a number for identification purposes that correlates with the policy responses. Figure 1 shows the number of participants by region.

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<sup>73</sup> Kevin Johnson, “Panel to Consider Tracking of Civilians Killed by Police,” *USA Today*, December 12, 2014, <http://www.usatoday.com/story/news/nation/2014/12/11/tracking-cop-deaths/20104193/>.

Figure 1. Focus Group Participation<sup>74</sup>



## 1. Identification of Safeguards

The researcher examined organizational policies that guide the actions of highway interdiction personnel to identify safeguards that have been established specifically for highway interdiction operations. The researcher also identified additional safeguards in the literature review and analyzed them to develop a more comprehensive catalog.

## 2. Strengths and Weaknesses Discussion

This researcher conducted a comparative analysis for each state police organization participating in the focus group discussion to determine the level of implementation of each identified policy safeguards. After the focus group discussion,

<sup>74</sup> Adapted from: U.S. Census, “Census Regions and Division of the United States,” accessed November 26, 2016, [http://www2.census.gov/geo/pdfs/maps-data/maps/reference/us\\_regdiv.pdf](http://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf).

the researcher evaluated each policy safeguard to document any unintended consequences conveyed during the discussion. In addition the researcher evaluated the strength and weaknesses of each policy safeguard, including variables such as the ability of the policy safeguard to control the actions of personnel, practicality of acceptance by personnel, widespread implementation by organizations, and potential for positive perception by the public. Finally, this researcher integrated literature with the strengths and weaknesses discussion to provide a more comprehensive understanding of the policy safeguards identified.

The creation of policy safeguards requires a substantial amount of dedication from the leadership of law enforcement organization and a commitment to implement guidance for personnel.<sup>75</sup> This action must be supported by training for a comprehensive understanding by personnel along with efforts to monitor their actions for compliance.<sup>76</sup> Once organizations establish policy safeguards, they may be periodically required to make modifications as circumstances affecting the effectiveness of policy safeguards change.<sup>77</sup> Examples would include feedback from personnel conducting highway interdiction operations and complaints associated with potential misconduct identified by members of the community.<sup>78</sup>

#### **E. QUANTITATIVE DATA GATHERING AND ANALYSIS**

The next phase of the research included gathering statistical information from state police organizations to determine if a correlation can be identified between the implementation of policy safeguards and accusations of improper practices. The data the researcher requested includes number of complaints filed against personnel in the categories of racial profiling, illegal searches, and rudeness.

Then, this researcher analyzed the data to determine if the number of personnel complaints per individual governed by highway interdiction policy safeguards differs

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<sup>75</sup> Johnson, "Panel to Consider Tracking of Civilians Killed," 191.

<sup>76</sup> Ibid., 190.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

when compared to the number of complaints per individual in the organization. Additionally, the researcher evaluated the statistical information to determine if any correlation or validity could be established between the number of complaints and the impact of highway interdiction safeguards implemented by the organization. A challenge for this researcher was the manner in which state police organizations categorize complaints by definition and their willingness to share the statistical information.

## **F. CHAPTER OVERVIEW**

In Chapter II of this thesis, the literature review explores operations on highway interdiction to identify the various approaches for interpreting the challenges associated with the enforcement strategy. Chapter III examines the various policy safeguards for highway interdiction implemented by the state police organizations participating in the focus group. Each state police organization is scored to determine the level of implementation for identified policy safeguards. Chapter IV gathers complaints filed against personnel of the state police organizations participating in the focus group and analyzes them to determine if there are any correlations in the statistical information. Specifically, this research compared data associated with complaints filed against personnel for racial profiling, illegal searches, and general rudeness in general enforcement operations to the number of complaints filed per individual conducting highway interdiction. Chapter V analyzes various options available to effectively guide the actions of personnel conducting highway interdiction operations from a national platform. The final chapter discusses the results and findings from this thesis exploring the need for additional research governing the actions of personnel conducting highway interdiction operations through the establishment of policy safeguards as law enforcement enters the twenty-first century for policing.

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## **II. LITERATURE REVIEW**

A review of the literature demonstrates the challenges that law enforcement organizations have encountered while conducting highway interdiction operations. The tactics law enforcement organizations use to identify and apprehend individuals involved in criminal activity are criticized for racial profiling, biased policing, ineffective consensual searches, and policing for profit. In an attempt to control the actions of personnel and reiterate the legitimacy of highway interdiction, some law enforcement organizations have developed ad hoc policy safeguards. Many of these policy safeguards were created in response to incidents alleging improper actions by law enforcement personnel. Examples would include the 1998 New Jersey Turnpike shooting and accusations of racial profiling in Maryland during 2003.<sup>79</sup> Law enforcement organizations have struggled to establish a consistent policy standard to minimize accusations against personnel. Hence, the challenges have continued to surface and evolve as the strategy of highway interdiction enters the realm of policing in the twenty-first century.

### **A. IDENTIFYING CRIMINAL ACTIVITY**

Robin Engel and Richard Johnson conducted a literature review of studies of 13 state police organizations conducting highway interdiction to determine the probability of successfully identifying individuals transporting contraband.<sup>80</sup> The review examined statistical data associated with the racial composition of drivers for vehicles searched and whether or not the search resulted in the seizure of evidence.<sup>81</sup> The findings determined that law enforcement personnel conducting highway interdiction were relatively unsuccessful at identifying vehicles containing contraband when consent searches were conducted as compared to searches justified by probable cause, plain view, or canine

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<sup>79</sup> Buerger, “Racial Profiling,” 744–745.

<sup>80</sup> Engel and Johnson, “Toward a Better Understanding,” 607–608.

<sup>81</sup> *Ibid.*, 614–615.

alerts.<sup>82</sup> Due to the low rate that evidence of a crime being identified during the search, these findings directly discredit the indicators for identifying criminal activity in vehicles currently taught to law enforcement personnel as the authors have found them to be inaccurate..<sup>83</sup> In addition, the research concluded that law enforcement organizations should restrict the use of consent searches for personnel conducting traffic stops.<sup>84</sup> This restriction would increase the public's confidence in the law enforcement organization to act fairly, allowing individuals to view law enforcement as legitimate.<sup>85</sup>

In a study titled *Consent Searches as a Threat to Procedural Justice and Police Legitimacy*, Jacintoa Gau addressed the additional negative consequences that emerge when individuals are subjected to consensual requests.<sup>86</sup> Because consent searches are less likely to turn up contraband, a significant number of drivers are subjected to consent searches that result in no contraband being located, which often comes across to the public as an arbitrary, heavy-handed law enforcement tactic.<sup>87</sup> Tensions run even higher among drivers and observers who are already suspicious of the actions of law enforcement and question the legitimacy of the original traffic stop.<sup>88</sup> Gau agreed with Engel and Johnson that the use of consent searches should be restricted by the leadership of law enforcement organizations.<sup>89</sup> Gau stated, "Police executives, therefore, must make a choice, as there is a trade-off between the convenience and possible short-term benefits of consent searches and the longer-term and more enduring effects of a populace that trusts and cooperates with its police."<sup>90</sup>

Gau's study entitled *Consent Searches as a Threat to Procedural Justice and Police Legitimacy* recommended that law enforcement organization should evaluate the

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<sup>82</sup> Ibid.

<sup>83</sup> Ibid., 614.

<sup>84</sup> Ibid., 614–615.

<sup>85</sup> Ibid., 615.

<sup>86</sup> Gau, "Consent Searches as a Threat," 2–5.

<sup>87</sup> Ibid., 13.

<sup>88</sup> Ibid., 13–14.

<sup>89</sup> Ibid., 13.

<sup>90</sup> Ibid.

benefits from consensual searches versus the negative associations when individuals not engaged in criminal activity are subjected to searches.<sup>91</sup> The strategy of using consent searches to discover contraband could further weaken relationships with minority communities and broaden the perception of illegitimate behavior by law enforcement personnel.<sup>92</sup>

## **B. BIAS WITHIN LAW ENFORCEMENT**

Negative associations of stereotyping groups of individuals by law enforcement personnel can be found when examining experiences through exposure to potential hazardous situations and criminal activity.<sup>93</sup> Rob Tillyer and Robin Engel used the social conditioning model to examine how past experiences by law enforcement personnel affects their behavior.<sup>94</sup> The model demonstrates how law enforcement personnel develop subconscious biases through experiences with criminal activity.<sup>95</sup> These biases can affect the decision-making processes of personnel entrusted to conduct law enforcement responsibilities.<sup>96</sup>

The findings of Engel and Johnson recommend that law enforcement organizations consider training for personnel on subconscious biases when organizations implement training programs.<sup>97</sup> Law enforcement organizations must train personnel to be aware of their potential subconscious biases and ensure individuals they encounter are treated in a fair and impartial manner.<sup>98</sup>

Traffic stops are a common interaction between law enforcement and members of the community and, at times, have generated concerns that there is a disparity in the

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<sup>91</sup> Ibid., 13–14.

<sup>92</sup> Ibid.

<sup>93</sup> Rob Tillyer and Robin S. Engel, “The Impact of Drivers’ Race, Gender, and Age During Traffic Stops Assessing Interaction Terms and the Social Conditioning Model,” *Crime & Delinquency* 59, no. 3 (2013): 373–374.

<sup>94</sup> Ibid., 373.

<sup>95</sup> Ibid., 373–374.

<sup>96</sup> Ibid., 373–376.

<sup>97</sup> Engel and Johnson, “Toward a Better Understanding,” 389.

<sup>98</sup> Tillyer and Engel, “The Impact of Drivers’ Race,” 389.

manner minority members of the community are treated by law enforcement.<sup>99</sup> Racial profiling has increasingly emerged as a nationwide community concern. In response, the ACLU has developed two strategies to address the problem.<sup>100</sup> First, the organization is supporting litigation against law enforcement agencies that they determine have exhibited patterns of racial profiling by law enforcement personnel interacting with the minority community.<sup>101</sup> Second, the ACLU lobbies legislative authorities throughout the nation to gain support for enacting laws requiring law enforcement organizations to gather statistical information associated with identifying the racial composition of drivers being stopped.<sup>102</sup> These laws are designed to record the disparity of minorities being stopped and confirm the existence of racial profiling.<sup>103</sup> By 1999, several states, such as Connecticut, North Carolina, Washington, and Missouri, had enacted laws mandating law enforcement organizations to collect statistical data identifying the race of the driver associated with traffic stops.<sup>104</sup> The trend continued as other states began to collect statistical data either by legislative action or voluntarily compliance.<sup>105</sup>

Once statistical data began to be collected, it became necessary to have a benchmark to compare the data for systematically identifying and eliminating racial profiling within law enforcement actions.<sup>106</sup> External benchmarks, such as the racial demographics associated with the community population, initially emerged as the logical mechanisms to rationally compare the statistical data gathered from traffic stops.<sup>107</sup> However, the comparisons became difficult as variables emerged that might have an impact on statistical data.<sup>108</sup> What was the racial composition of individuals exposed to

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<sup>99</sup> Matthew B. Ross et al., *Traffic Stop Data Analysis and Findings, 2014–15* (New Britain, CT: Institute for Municipal and Regional Policy, 2016), i.

<sup>100</sup> Rice and White, *Race, Ethnicity, and Policing*, 158.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*, 158–159.

<sup>105</sup> *Ibid.*, 163–164.

<sup>106</sup> *Ibid.*, 180.

<sup>107</sup> *Ibid.*, 181.

<sup>108</sup> *Ibid.*, 180–181.

the police?<sup>109</sup> Or, what was the racial composition of individuals committing violations of law, which could subject them to a possible traffic stop?<sup>110</sup> The statistical data for the racial composition of individuals encountering the police in the two questions could be different from the racial demographics associated with the community's population.

The technique of "observation benchmarks" emerged as a methodology pioneered by John Lamberth during his research of traffic stops on the New Jersey Turnpike.<sup>111</sup> Researchers monitored traffic on the New Jersey Turnpike to identify the racial composition of drivers who were speeding on the interstate to identify a "subpopulation at risk" of those encountering law enforcement action.<sup>112</sup> The racial composition of the subpopulation could be used to establish a benchmark for comparison with the racial statistical data collected by law enforcement personnel conducting traffic stops.<sup>113</sup> Although this methodology provided the ability to identify a subpopulation, questions by researchers remained about the composition of the subpopulation.<sup>114</sup> The methodology was not as effective in urban areas where observation benchmarking was more difficult.<sup>115</sup> On the New Jersey Turnpike, speeding was used to identify the subpopulation because state police personnel emphasize traffic enforcement.<sup>116</sup> Drivers stopped for other violations were not incorporated into the subpopulation, thus weakening the comparison when used as a benchmark for the totality of vehicles stopped by law enforcement personnel.<sup>117</sup>

The evolution of benchmarking progressed to compare racial statistical data for law enforcement personnel who work the same shifts and locations as peers.<sup>118</sup> This

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<sup>109</sup> Ibid., 181.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid., 184.

<sup>112</sup> Ibid., 183.

<sup>113</sup> Ibid., 184.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid., 184–185.

<sup>118</sup> Ibid., 189.

technique has become known as internal benchmarking.<sup>119</sup> This methodology is especially adaptable to highway interdiction personnel who work as teams operating under the same policies and monitoring essentially the same traffic.<sup>120</sup> Under these conditions, the racial statistical data of the peer group members can be compared to identify disparities in the racial compositions of drivers stopped for traffic violations.<sup>121</sup>

The collection of statistical data by law enforcement organization is only the starting point for addressing racial disparities in drivers stopped for traffic violations.<sup>122</sup> As researcher Lorie Fridell noted in *By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops*, disparity in racial statistical data can be measured, but it is difficult to identify the cause of the disparity.<sup>123</sup> Just because a disparity is identified, it does not necessarily mean that racial profiling by law enforcement personnel is the cause.<sup>124</sup> Equally true is the lack of disparity in racial statistical data does not necessarily eliminate the possibility of racial profiling by law enforcement personnel.<sup>125</sup>

Patricia Warren and Donald Tomaskovic-Devey conducted a study to analyze the potential effects of gathering statistical data as a corrective measure for racial profiling.<sup>126</sup> As empirical proof of potential biases by law enforcement personnel, Tomaskovic-Devey and Warren examines statistical information associated with the North Carolina State Highway Patrol concerning the enforcement actions of personnel.<sup>127</sup> They examined the discovery of contraband during vehicle searches before racial

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<sup>119</sup> Ibid.

<sup>120</sup> Ibid., 188–189.

<sup>121</sup> Ibid., 192.

<sup>122</sup> Lorie A. Fridell, *By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops* (Washington, DC: Department of Justice, Office of Community Policing Services, 2004), [http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Racially-Biased\\_Policing/by%20the%20numbers%20-%20a%20guide%20for%20analyzing%20race%20data%20from%20vehicle%20stops%202004.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Racially-Biased_Policing/by%20the%20numbers%20-%20a%20guide%20for%20analyzing%20race%20data%20from%20vehicle%20stops%202004.pdf), 27.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid., 32.

<sup>125</sup> Ibid., 30.

<sup>126</sup> Tomaskovic-Devey and Warren, “Explaining and Eliminating Racial Profiling,” 36.

<sup>127</sup> Ibid.

profiling allegations surfaced as compared to the year after the allegations.<sup>128</sup> The statistical information measuring “hit rates” for minority drivers aligned closely with hit rates among white drivers after the allegation surfaced.<sup>129</sup> Before the allegations, however, the hit rates for minority drivers were substantially lower than hit rates for white drivers.<sup>130</sup>

Prior to racial profiling accusations entering the national stage, black drivers stopped were four times as likely to be searched as compared to white drivers stopped.<sup>131</sup> The search rate for black drivers was considerably higher, although the searches of vehicles operated by black drivers were 33 percent less likely to produce evidence of a crime.<sup>132</sup> After racial profiling accusations, the search rate for black drivers was cut 50 percent and the disparity in the percentage for recovering evidence between black and white drivers was eliminated.<sup>133</sup> The clear difference that the added scrutiny made suggested that law enforcement was exercising a bias against minority drivers.<sup>134</sup>

Warren and Tomaskovic credited media attention and legislative action as successful mechanisms to correct undesirable law enforcement behavior by implementing statistical gathering processes.<sup>135</sup> This accountability helped eliminate inherent biases that were contained in law enforcement personnel’s subconscious.<sup>136</sup> Supervision plays a critical role to ensure compliance with established policies and procedures associated with protective measures.<sup>137</sup> The researchers “encouraged police organizations to collect

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<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid., 35–38.

<sup>135</sup> Warren and Tomaskovic-Devey, “Racial Profiling and Searches,” 343.

<sup>136</sup> Tomaskovic-Devey and Warren, “Explaining and Eliminating Racial Profiling,” 38.

<sup>137</sup> Warren and Tomaskovic-Devey, “Racial Profiling and Searches,” 344.

data regularly and encourage supervisors to become familiar with the data to monitor properly the enforcement practices of their officers.”<sup>138</sup>

### C. STATISTICAL DATA GATHERING

Law enforcement organizations must collect statistical data associated with the racial composition of drivers stopped by law enforcement personnel as recommended by Warren and Tomaskovic.<sup>139</sup> They explain,

By 2007, a total of 25 states had enacted legislation requiring police agencies to collect data on the race of motorists involved in traffic stops, with selected police departments in 22 other states voluntarily agreeing to collect such data.<sup>140</sup>

Law enforcement organizations are also investing into technology to supplement the statistical monitoring of personnel, such as video recording traffic stops.<sup>141</sup> A study conducted by Paul Heaton reviewed results of public awareness of critical issues and concluded that policy makers have implemented changes to organizational policies causing law enforcement personnel to modify actions.<sup>142</sup>

A study conducted by Kirk Miller expanded on the ramifications associated with policy adaptation by law enforcement organizations.<sup>143</sup> The study determined that law enforcement organizations are more likely to be responsive to community concerns if the minority leaders draw attention to a particular issue requiring change.<sup>144</sup> Law enforcement organizations have a vested interest to implement policies that are view beneficial by the community, which in turn results in an enhanced relationship and

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<sup>138</sup> Ibid., 365.

<sup>139</sup> Ibid.

<sup>140</sup> Paul Heaton, “Understanding the Effects of Antiprofiling Policies,” *Journal of Law and Economics* 53, no. 1 (2010): 29, doi:10.1086/649645.

<sup>141</sup> International Association of Chiefs of Police, *The Impact of Video Evidence on Modern Policing* (Washington, DC: Office of Community Oriented Policing Services, 2001), <http://www.theiacp.org/portals/0/pdfs/IACPIn-CarCameraReport.pdf>, 5.

<sup>142</sup> Heaton, “Understanding the Effects of Antiprofiling Policies,” 57.

<sup>143</sup> Miller, “The Institutionalization of Racial Profiling Policy,” 45. .

<sup>144</sup> Ibid., 37–40.

perception of legitimacy.<sup>145</sup> This requires law enforcement organizations to adapt policies supportive of eliminating the perception of racial profiling, such as statistical data collection.<sup>146</sup> The organizational leadership should be cognizant of minority community concerns and be proactive to sensitive issue that could affect the reputation of the organization.<sup>147</sup> These efforts must be transparent for law enforcement organizations to operate with the support of the public and be viewed as legitimate.<sup>148</sup>

#### **D. SEEKING AN ANSWER TO POLICE MISCONDUCT**

Historically, the DOJ has investigated allegations of police misconduct that have emerged from undesirable behavior by law enforcement personnel or organizations.<sup>149</sup> This authority was legislated to the U.S. attorney general from Congress under 42 U.S.C. § 14141.<sup>150</sup> The primary objective of this legislation is to ensure law enforcement behaviors are in compliance with the rights afforded to citizens by way of the U.S. Constitution.<sup>151</sup> The DOJ can influence a national standard for law enforcement actions by identifying undesirable behaviors and implementing corrective measures.<sup>152</sup> Although the investigations can influence national standards, the DOJ has averaged three investigations each year—less than one full-scale investigation annually.<sup>153</sup> The limited number of investigations conducted annually is problematic when considering the United States possesses over 18,000 police departments.<sup>154</sup>

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<sup>145</sup> Ibid.

<sup>146</sup> Ibid., 37.

<sup>147</sup> Ibid., 49.

<sup>148</sup> Ibid., 49–50.

<sup>149</sup> Stephen Rushin, “Federal Enforcement of Police Reform,” *Fordham Law Review* 82, no. 6 (2014): 3189.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid., 3191–3192.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid., 3193.

<sup>154</sup> U.S. Department of Justice, *National Sources of Law Enforcement Employment Data* (Washington, DC: Office of Justice Programs, Bureau of Justice Statistics, 2016), <http://www.bjs.gov/content/pub/pdf/nsleed.pdf>, 1.

As an alternative to the authority granted to the U.S. attorney general under 42 U.S.C. § 14141, Congressman John Conyers, Jr. has proposed legislation since 1997 commonly referred to the “End Racial Profiling Act.”<sup>155</sup> The act would mandate the implementation of control measures for racial profiling under the U.S. attorney general.<sup>156</sup> Measures include prohibiting racial profiling, gathering statistical data, training, grant funds for implementation, and authorizing investigations for allegations of racial profiling.<sup>157</sup> Interestingly, the legislation authorizes the U.S. attorney general to deny law enforcement organizations grant funding if the U.S. attorney general determines it appropriate.<sup>158</sup> The measure would allow the U.S. attorney general to influence state or local law enforcement organizations dependent on federal grant funding to operate.<sup>159</sup>

Organizational accreditation is another possibility to establish a national standard for law enforcement organization conducting highway interdiction operations.<sup>160</sup> Policies and procedures would be established and law enforcement organizations would agree to external reviews for evaluating their performance.<sup>161</sup> The Commission of Accreditation for Law Enforcement Agencies (CALEA) operates under a list of 463 standards for accreditation, and law enforcement already must comply with all the mandatory standards, including 80 percent of “other-than-mandatory” standards to receive the designation.<sup>162</sup> The oversight protective measures could be incorporated in the CALEA standards and organizations seeking to perform highway interdiction could subject their organization to the external review.

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<sup>155</sup> Rice and White, *Race, Ethnicity, and Policing*, 61.

<sup>156</sup> *Ibid.*, 157–158.

<sup>157</sup> End Racial Profiling Act 2015 (2015), 9–14.

<sup>158</sup> *Ibid.*, 7–12.

<sup>159</sup> *Ibid.*, 9–14.

<sup>160</sup> Manuel P. Teodoro and Adam G. Hughes, “Socializer or Signal? How Agency Accreditation Affects Organizational Culture,” *Public Administration Review* 72, no. 4 (2012): 583.

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*, 584.

A study conducted by Manuel Teodoro and Adam Hughes examined if accreditation improves the performance of personnel.<sup>163</sup> Specifically, the study focused on the attitudes of law enforcement personnel toward community-oriented policing within six municipal law enforcement organizations from the northeastern portion of the United States.<sup>164</sup> The accreditation process is supported by community-oriented policing principles, thus the accreditation process should improve the personnel's attitude toward the topic.<sup>165</sup>

The study concluded that accreditation does not necessarily improve the professionalism of law enforcement personnel.<sup>166</sup> Agencies seeking accreditation performed just as well, indicating that being accredited was not the catalyst for improved professionalism.<sup>167</sup> It should be noted that both of these groups performed substantially better than organizations not seeking accreditation.<sup>168</sup> Therefore, the mere fact that an organization is seeking accreditation will improve professionalism versus the actual fact of being accredited.<sup>169</sup> The study also concluded that accreditation does improve the understanding of priorities between the organizational leadership and lower ranks.<sup>170</sup>

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<sup>163</sup> Ibid., 585.

<sup>164</sup> Ibid., 587.

<sup>165</sup> Ibid., 589.

<sup>166</sup> Ibid., 589–590.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid., 589.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid., 590.

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### **III. POLICY SAFEGUARDS**

This chapter examines various policy safeguards for highway interdiction to determine the consistency of implementation for guiding the actions of personnel and reiterating the legitimacy of the strategy. A focus group consisting of 11 supervisors from state police organizations nationwide provided the researcher with insight into policy safeguards implemented by their organization for controlling the actions of personnel conducting highway interdiction operations. In addition, the individuals have an average of 20 years of law enforcement experience, including 10 years as a supervisor. The total number of years of experience is 221 years.

#### **A. FOCUS GROUP INTERVIEWS**

The researcher conducted focus group interviews with representatives from 11 state police organizations throughout the United States who volunteered to participate in the research. One representative from each state police organization responded to 10 topic areas associated with policy safeguards for conducting highway interdiction operations (see Appendix A). The researcher created 10 topics areas from the review of the available literature designed to solicit information from the focus group representatives on policy safeguards for highway interdiction implemented by their respective organization.

##### **1. Audio/Video Recordings to Document Police Action**

The first adaptation for video recording equipment to be installed in a police vehicle was by the Connecticut State Police in the 1960s.<sup>171</sup> The equipment had severe limitations due to size and practicality but demonstrated the technology could be used by law enforcement for investigative needs.<sup>172</sup> In the 1980s, innovations in technology made audiovisual recordings of traffic stops more practical because the equipment could readily be installed in patrol vehicles and was an affordable option for law enforcement

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<sup>171</sup> International Association of Chiefs of Police, *The Impact of Video Evidence*, 5.

<sup>172</sup> Ibid.

organizations.<sup>173</sup> The technology was installed in patrol vehicles for the purpose of providing “as true and accurate depiction of events as is reasonably possible in order to provide the best possible evidence and documentation of events.”<sup>174</sup> Efforts initiated by Mothers Against Drunk Drivers exponentially extended the use of mobile video recordings by law enforcement to record impaired driving associated with driving under the influence violations, enhancing the prosecution of individuals.<sup>175</sup>

By the 1990s, law enforcement organizations participating in highway interdiction operations began implementing mobile video technology to record traffic stops to document the interactions of law enforcement with individuals stopped.<sup>176</sup> This measure was particularly important for law enforcement personnel when recording consensual contacts, which resulted in individuals granting authority for law enforcement to search vehicles suspected of transporting illicit narcotics.<sup>177</sup> As time progressed, the use of mobile video technology to produce audio and visual recordings of traffic stops expanded into protecting law enforcement organization from allegations of racial profiling and other inappropriate behavior.<sup>178</sup>

The focus group confirmed the expansive utilization of mobile video technology by law enforcement personnel conducting highway interdiction operations. All 11 state police organizations participating in this policy analysis acknowledged that personnel with mobile video technology installed in their patrol vehicles are required to record interactions with individuals during traffic stops. Although all of the state police organizations utilize mobile video technology, the similarities begin to end at the implementation process. One state police organization advised that only a small percentage of patrol vehicles actually possess the technology, limiting its use for monitoring behavior of personnel. Additionally, the organization does not mandate video

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<sup>173</sup> Ibid.

<sup>174</sup> International Association of Chiefs of Police, *Mobile Video Recording Equipment* (Alexandria, VA: IACP, National Law Enforcement Policy Center, 2005), 1.

<sup>175</sup> International Association of Chiefs of Police, *The Impact of Video Evidence*, 5.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.

recordings be reviewed by supervision. When the video recordings are reviewed, the goal of the reviews is more oriented toward leveraging training opportunities versus correcting inappropriate behavior.

The remaining organizations utilize the technology to monitor behavior of personnel conducting traffic stops involving highway interdiction operations. Corrective actions taken as a result of reviews from video recordings have ranged from minor disciplinary proceedings to the most severe action, termination of the employee. Additionally, video recordings are reviewed by supervisors when the organization received a complaint, personnel achieve significant arrests, or an unusual incident occurs. The video recordings can also be used to identify positive behavior by personnel, which are reinforced through supervisor acknowledgment to personnel performing operations. The frequency of the monitoring video recordings varied among the organizations with the most frequently reviews conducted monthly. Some of the sporadic reviews only required supervision to monitor 40 hours of video recordings annually for each member with no specific timeframes identified.

The focus group discussion on supervisors reviewing video recordings was expanded to determine if those supervisors possess experience with highway interdiction operations. The majority of the supervisors did possess some experience with highway interdiction operations; however, a significant number of organizations reported that personnel conducting highway interdiction operations may have their video reviewed by a supervisor with minimal or no experience with the techniques deployed by personnel to identify vehicles transporting illicit narcotics. If a supervisor does not understand the techniques, it would be difficult for him or her to identify the need for corrective action when inappropriate behavior is displayed. These reviews can also reveal problematic situations when the supervisor falsely accuses personnel with inappropriate behavior, which was in compliance with approved highway interdiction techniques. Therefore, it is beneficial if the supervisor reviewing the video recordings for highway interdiction operations actually possesses expertise in the strategy.

Another unintended consequence identified during the discussion was the amount of time necessary for conducting the reviews of video recordings. As a result, only one

state police organization reviewed all traffic stops conducted by personnel performing highway interdiction operations. Some of the organizations reported that policy mandated a supervisor review at least one traffic stop per session containing a vehicle search or canine deployment. Table 2 illustrates the respective policy safeguards implemented by the state police organization participating in the focus group for audiovisual recordings of traffic stops.

Table 2. Policy Safeguards for Audiovisual Recordings of Traffic Stops

State Police Agencies	1	2	3	4	5	6	7	8	9	10	11
<b>Audiovisual Recordings of Traffic Stops</b>	X	X	X	X	X	X	X	X	X	X	X
Mandated Review by Supervision	X	X	X	X	X		X	X	X	X	X
Monthly Reviews			X	X	X			X	X		
Quarterly Reviews	X									X	
Sporadic Reviews		X				X	X				
No Reviews											X
Reviews Conducted by Interdiction Supervisor			X	X	X	X	X	X	X		X
Review All Traffic Stops							X				
Review One Stop with Vehicle Search or Canine Deployment			X				X			X	

## 2. Transparency of Traffic Stops

The introduction to the *Final Report of the President's Task Force on 21<sup>st</sup> Century Policing* starts with a quote from President Barack Obama, who states, “When any part of the American family does not feel like it is being treated fairly, that’s a

problem for all of us.”<sup>179</sup> The first pillar in the report emphasizes the need for law enforcement agencies to build trust within their communities through a “culture of transparency” supportive of the community viewing law enforcement organizations as legitimate.<sup>180</sup> Thus, one strategy law enforcement organizations must explore is transparency in the decision-making process for personnel conducting highway interdiction operations.<sup>181</sup>

As defined by the Office of Community Oriented Policing Services report on procedural justice for law enforcement, transparency is “the processes by which decisions are made do not rely upon secrecy or deception.”<sup>182</sup> When law enforcement personnel are transparent with their perceived justification for the decision-making process, community members are provided with an opportunity to comprehend and accept the justifications, even if they disagree with the information.<sup>183</sup>

The focus group also addressed the issue of transparency by examining the policies implemented by state police organizations for highway interdiction that are designed to document the actions of personnel. Subsequently, a supervisor can review documentation by personnel conducting highway interdiction operations for supporting justification that guided the actions of personnel during the decision-making process. The group focused specific attention on the documentation of reasonable suspicion or probable cause that guided the actions of personnel to extend traffic stops into proving or disproving their suspicion of criminal activity. All of the state police organizations reported some manner of documenting justifications during traffic stops. The minimal standard requiring justification to be documented occurred when the decision-making process reached the conclusion to deploy a narcotics canine during a stop. In addition, the majority of the organizations specifically identified the requirement to document

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<sup>179</sup> President’s Task Force on 21st Century Policing, *Final Report*, 5.

<sup>180</sup> *Ibid.*, 1.

<sup>181</sup> *Ibid.*

<sup>182</sup> Laura Kunard and Charlene Moe, *Procedural Justice for Law Enforcement: An Overview* (Washington, DC: Office of Community Oriented Policing Services, 2015), <http://ric-zai-inc.com/Publications/cops-p333-pub.pdf>, 7.

<sup>183</sup> *Ibid.*

justification for simply requesting consent to search a vehicle or actually searching a vehicle. In all cases, the information is forwarded to a supervisor for review. In a few instances, the justification is uploaded into an automated system that preserves the information for subsequent reviews when needed.

The focus group expanded the conversation into concerns over discovery issues noting that the information documented will be subjected to the rules of discovery during criminal prosecutions. Personnel documenting the justification for actions taken during traffic stops must provide accurate and comprehensive information to convey the rationale behind the decision-making process. Shortcuts in documentation could be detrimental to the overall prosecution of criminal cases through the misinterpretation or deliberate manipulation of the available information as the case is presented in court.

An additional unintended consequence of documenting justification for the decision-making process is identifying areas for improving performance. When reviewing the information documented, a supervisor is provided with the opportunity to identify weak performance and implement improvement strategies through informal counseling or traditional training. This activity can improve the understanding of reasonable suspicion or probable cause by personnel conducting operations and confirm their ability to articulate justification for actions. Table 3 illustrates the respective policy safeguards implemented by the state police organization participating in the focus group associated with the documentation for justifying the actions of personnel.

Table 3. Policy Safeguards for Transparency by Documenting Justification of Personnel Actions

State Police Agencies	1	2	3	4	5	6	7	8	9	10	11
<b>Transparency by Documenting Justification of Personnel Action</b>	X	X	X	X	X	X	X	X	X	X	X
All Vehicle Searches or Consensual Requests	X		X	X				X	X	X	X
Reviews Conducted by Supervisor	X	X	X	X	X	X	X	X	X	X	X
Reviews Conducted by Interdiction Supervisor			X	X		X		X	X		X

Law enforcement organizations have historically completed criminal investigative reports documenting when personnel engage in investigations for qualifying criminal events. The focus group discussed this process as another opportunity for personnel conducting highway interdiction operations to document the decision-making process to generate more transparency associated with police actions. The review of criminal investigative reports provides supervisors with an opportunity to comprehend the actions of personnel during highway interdiction operations resulting in criminal arrests. The documentation is designed to articulate why certain police actions were conducted during the encounter with an individual. Examples include reporting why an individual was stopped, items of interests observed, why they were suspicious, justification for searching the vehicle, and why an individual was detained, if applicable.

The vast majority of focus group members stated that criminal investigative reports for personnel conducting highway interdiction operations were reviewed by a supervisor with highway interdiction experience. This review is a distinctive advantage for supervisors when seeking to comprehend the actions of personnel during highway interdiction operations. Supervisors with highway interdiction experience more readily

understand the evolving trends for drug trafficking organizations and how those trends might affect the decision-making process for personnel. The expanded knowledge also helps a supervisor with placing the information within the investigative report into proper context for evaluating the actions of personnel. Reviewing criminal investigative reports documenting police actions is the one area of policy safeguards that the vast majority of state police organizations exhibited some level of consistency and similarity in the application of policy.

One state police organization reported that criminal investigative reports are reviewed by supervisors with little to no highway interdiction experience, and then they are reviewed by supervision with highway interdiction experience. As a result, conflicting instructions to interdiction team members has occurred as an unintended consequence. The supervisor with minimal highway interdiction experienced provided instructions that were not needed or unsupported by evolving case laws. Table 4 illustrates the respective policy safeguards implemented by the state police organization participating in the focus group for procedures associated with reviewing criminal investigative reports.

Table 4. Policy Safeguards for Criminal Investigative Reports Completed

<b>State Police Agencies</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>
<b>Criminal Investigative Reports Completed</b>	X	X	X	X	X	X	X	X	X	X	X
Reviews Conducted by Supervisor	X	X	X	X	X	X	X	X	X	X	X
Reviews Conducted by Interdiction Supervisor		X	X	X	X	X	X	X	X	X	X

### 3. Controlling Discretion

Those challenging the strategy of highway interdiction have recognized the difference between searches of vehicles based on probable cause and searches of vehicles

in which law enforcement personnel exercise discretion on whether or not to consensually request authorization to search a vehicle.<sup>184</sup> Consensual searches are based on the principle of discretionary power granted to law enforcement personnel by their organization and supported by case law.<sup>185</sup> In an effort to minimize the potential for law enforcement personnel to engage in racial profiling, law enforcement organizations have begun implementing strategies designed to limit the use of consensual requests to search vehicles.<sup>186</sup> Civil rights advocates, such as the ACLU, have encouraged law enforcement organizations to deny personnel the ability to request consensual authorization to search vehicles absent of probable cause.<sup>187</sup> In 2003, the California Highway Patrol barred personnel from conducting consensual searches of vehicles as a result of civil litigation against the organization.<sup>188</sup>

The focus group also examined the discretionary powers entrusted to law enforcement personnel within the state police organizations for the purpose of determining what policies exist to control the use of discretion. The conversation centered on the discretionary use of consent for searching vehicles. All participating state police organizations confirmed that consensual search requests are documented, with specific emphasis on whether or not the request was granted. This practice preserves the response for court proceedings if criminal activity is identified during the search and prosecution pursued.

The focus group conversation further explored the use of consensual searches and strategies deployed by state police organizations to limit the exercise of discretion. By policy, some of the state police organizations reported that their personnel are required to articulate at least reasonable suspicion of criminal activity before consensual request to search a vehicle can be asked. Personnel are prohibited from requesting consent unless the minimal standard of reasonable suspicion can be achieved. This additional policy

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<sup>184</sup> Warren and Tomaskovic-Devey, “Racial Profiling and Searches,” 357.

<sup>185</sup> Ibid.

<sup>186</sup> Engel and Johnson, “Toward a Better Understanding,” 614–615.

<sup>187</sup> Henson, *Flawed Enforcement*, 3.

<sup>188</sup> Ibid., 9.

safeguard is beyond the standard requirements of consensual searches established through court rulings—for example, authority to authorize the search, knowingly consent, and voluntarily give consent. One state police organization reported that personnel are required to seek specific consent to search the trunk of a vehicle or locked container within the vehicle. Table 5 illustrates the respective policy safeguards implemented by the state police organization participating in the focus group for documenting requests associated with searches of vehicles stopped.

Table 5. Policy Safeguards for Documenting Responses to Request for Vehicle Searches

State Police Agencies	1	2	3	4	5	6	7	8	9	10	11
<b>Document Response to Requests for Vehicle Searches</b>	X	X	X	X	X	X	X	X	X	X	X
By Policy, Must Have at Least Reasonable Suspicion to ask for Consent		X		X		X		X		X	X

#### 4. Statistical Data Collection for Traffic Stops

The focus group explored the level of statistical data collection being gathered by the participating state police organizations and how that information is utilized to monitor the actions of personnel conducting highway interdiction operations. Though the majority of state police organizations reported gathering statistical data associated with the racial composition of drivers stopped by personnel for traffic violations, the manner by which the state police organizations monitor the statistical data varies drastically. Three organizations do not collect any statistical data associated with traffic stops concerning the racial composition of drivers, thus no monitoring can occur. One organization only reviews the racial statistical data of personnel when a complaint is filed. If a complaint is not filed, there is no review of the information.

None of the state police organizations reported a partnership with an academic institution that reviews the statistical data producing reports. Members of the focus group were aware of this happening in other states although no specific example was provided.

Five of the state police organizations have supervisors review the statistical information to monitor the racial composition of drivers stopped by personnel. Interestingly, all five of them have also instituted internal benchmarking for comparison of racial statistical data associated with personnel conducting highway interdiction operations. Furthermore, they use peer group review to identify disparity among the group members for further exploration into the potential cause of the disproportionate numbers. The supervisors conducting the peer group reviews have experience with highway interdiction operations and familiar with their organization's program.

It should be noted that one of the three state police organizations that does not collect statistical data actually did collect the data in the past. The agency reviews of the statistical data did not reveal a bias, so it discontinued the practice.

The focus group conversation expanded into unintended consequences identified with policies implemented for statistical data collection. Conversation revealed the process is time consuming and requires attention to detail for maintaining accuracy. This situation has resulted in law enforcement personnel spending time conducting administrative duties, thus reducing the amount of time available for highway interdiction operations. One state police organization has experienced significant interaction with the media, which required additional time and attention to properly manage. Table 6 illustrates the respective policy safeguards implemented by the state police organization participating in the focus group for the collection of racial statistics associated with drivers stopped by law enforcement personnel conducting highway interdiction operations.

Table 6. Policy Safeguards for Racial Statistical Data Collected by Personnel

State Police Agencies	1	2	3	4	5	6	7	8	9	10	11
<b>Racial Statistical Data Collected by Personnel</b>	X	X	X	X				X	X	X	X
Statistical Data Reviewed by Supervision	X		X	X				X	X		X
Statistical Data Reviewed by Supervision with Interdiction experience	X		X	X				X	X		X
Internal Benchmark Comparison Completed	X		X	X					X		X
Academic Institutional Review of Statistical Data											

## 5. Calculations of Hit Rates

Law enforcement personnel performing highway interdiction operations use a combination of skills, including training, experience, and observations to identify criminal activity, which is then substantiated through convictions in court.<sup>189</sup> Individuals opposed to highway interdiction operations identify the low hit rates as empirical proof that the strategy is not only ineffective but creates an intrusion into the lives of community members.<sup>190</sup> Hit rates are calculated by totaling the number of vehicles that law enforcement personnel search and identifying the percentage of searches resulting in contraband actually being seized.<sup>191</sup>

<sup>189</sup> Buerger, "Racial Profiling," 741.

<sup>190</sup> Ibid.

<sup>191</sup> Rice and White, *Race, Ethnicity, and Policing*, 193.

The focus group discussed hit rates although little information was revealed. Only one state police organization reported actually calculating the hit rates for personnel conducting highway interdiction operations. The organization further separated the information into two categories of consent and probable cause searches for determining successful seizures of contraband. The statistical information associated with hit rates is not examined beyond the seizure of contraband.

Although all of the state police organizations documented what was being seized by personnel, none of them had an authoritative definition for hit rates beyond the seizure of contraband. Proactive law enforcement efforts by personnel conducting highway interdiction operations may not translate into successful seizures as hit rates are calculated. The group discussed several illustrations. One example discussed is when law enforcement personnel search a vehicle and discover an advanced hidden compartment for concealing contraband that is empty. The search does translate into a successful seizure for contraband, thus reducing the hit rate. The same may be true when law enforcement personnel correctly identify suspicious activity associated with a traffic stop; however, the contraband cannot be located or the individual involved in drug trafficking has not picked up the contraband yet. A suspended driver committing a criminal act while driving may display deceptive behavior but does not have contraband in the vehicle.

All of these situations could negatively affect the hit rate although personnel conducting highway interdiction operations did properly identify suspicious behavior. In turn, concerns over low hit rates could negatively affect the commitment of personnel to continue performing highway interdiction. Table 7 illustrates the respective policy safeguards implemented by the state police organization participating in the focus group associated with reviewing statistical information for hit rates.

Table 7. Policy Safeguards for Calculating Hit Rates of Personnel

State Police Agencies	1	2	3	4	5	6	7	8	9	10	11
<b>Calculates Hit Rates of Personnel</b>				X							X
Established Criteria for Defining a Hit											X
Separate Probable Cause and Consent for Hit Rates				X							X
Hit Rates Reviewed by Supervision											X
Hit Rates Reviewed by Supervisor with Interdiction Experience											X

## 6. Selection of Personnel

The professionalism and success of law enforcement organizations has long been attributed to the ability of those organizations to “select, train, and supervise its personnel.”<sup>192</sup> It starts with the proper selection of personnel. Over the years, law enforcement organizations have developed extensive testing procedures to identify candidates to become law enforcement officers and join their ranks.<sup>193</sup> The Office of Community Oriented Policing Services within the Department of Justice sponsored a report entitled, *Building Trust between the Police and the Citizens They Serve*. This report mentions essential characteristics, such as honesty, integrity, and equity as elements of professionalism needed to foster trust between the police and members of the community.<sup>194</sup> State police organizations conducting highway interdiction operations must ensure the right individuals are selected to participate in this specialized field.

<sup>192</sup> Nick J. Colarelli and Saul M. Siegel, “A Method of Police Personnel Selection,” *Journal of Criminal Law and Criminology* 55, no. 2 (1964): 287.

<sup>193</sup> International Association of Chiefs of Police, *Building Trust between the Police and the Citizens They Serve* (Washington, DC: Office of Community Oriented Policing Services, 2007), <http://www.theiacp.org/portals/0/pdfs/BuildingTrust.pdf>, 9–10.

<sup>194</sup> *Ibid.*, 5.

Another topic explored by the focus group was the procedure used by the state police organizations to select individuals for conducting specialized highway interdiction operations. A significant majority of state police organizations reported an extensive process for selecting personnel for assignment on the specialized interdiction team. The process includes completing an application, reviewing their work history, an interview, and recommendations by supervision. These requirements are designed to identify the most qualified individual possessing essential characteristics, such as honesty, integrity, and equity along with a strong work ethic and ability to identify criminal activity.

One organization reported the selection process is determined by seniority due to the binding contractual agreements with their union. Another state police organization reported personnel are utilized for the purpose of conducting specialized highway interdiction operations periodically throughout the year, thus controlling assignment to teams. The state police organizations are varied as to the number of years of law enforcement experience required prior to obtaining authorization to apply for the highway interdiction team. The highest requirement for experience with the organization was at least three years of experience before an application would be accepted. The majority of the state police organizations with a service mandate required at least two years of experience prior to qualifying to apply.

All state police organizations participating in the focus group reported that personnel selected to join their organization's highway interdiction team are offered specialized interdiction training to enhance their knowledge, skills, and abilities. Some of the state police organizations have developed in-house interdiction training programs to supplement training programs offered throughout the nation. The focus group identified, such training programs as Desert Snow<sup>195</sup> and the Drug Interdiction Assistance Program,<sup>196</sup> as nationally recognized training programs providing advanced interdiction training.

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<sup>195</sup> Desert Snow, "Desert Snow," accessed September 16, 2016, <https://desertsnow.com/>.

<sup>196</sup> Federal Motor Carrier Safety Administration National Training Center, *DIAP Training Information Packet* (Washington, DC: U.S. Department of Transportation), accessed November 26, 2016, <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/DIAP.pdf>.

However, only two state police organizations have identified mandatory training for personnel assigned to highway interdiction teams. The majority of state police organizations only provide advanced interdiction training when it becomes available versus mandating a specific course of action. Three of the state police organizations reported that newly assigned members must complete a 12-month probationary period to enhance training and determine if the individual is suited for the highway interdiction program. Table 8 illustrates the respective policy safeguards implemented by the state police organizations participating in the focus group for the selection of personnel assigned to their highway interdiction program.

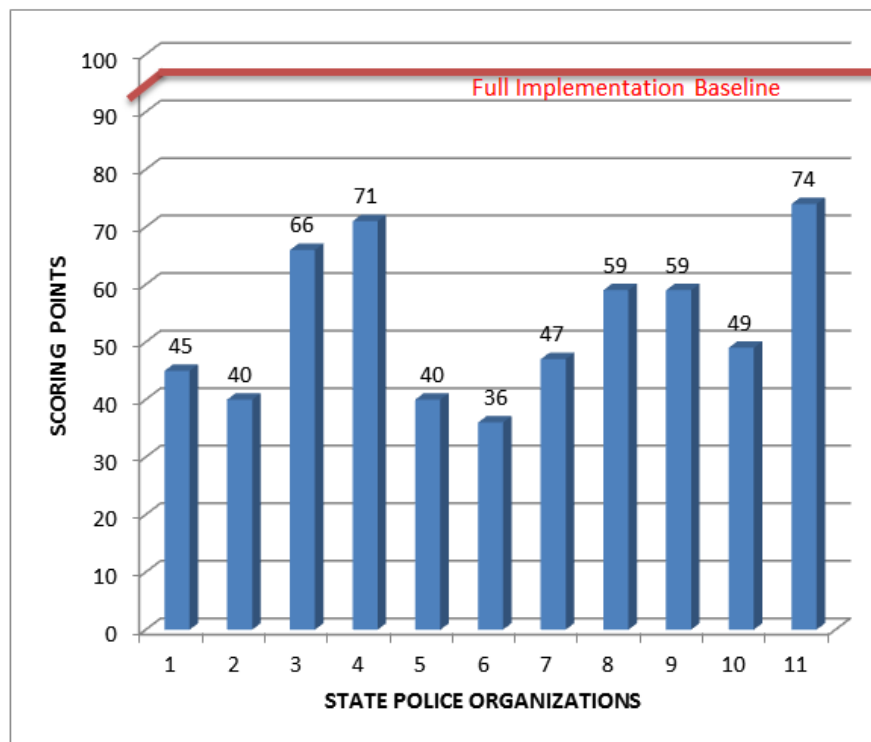
Table 8. Policy Safeguards for Identified Procedures to Select Personnel

State Police Agencies	1	2	3	4	5	6	7	8	9	10	11
<b>Identified Procedure to Select Personnel</b>		X	X	X	X		X	X	X	X	X
Over 3 Years		X	X				X				
2–3 Years				X		X		X	X	X	
Under 2 Years	X				X						X
Personnel Receive Specialized Interdiction Training	X	X	X	X	X	X	X	X	X	X	X
Mandatory Standardized Training Program of Courses			X						X		
Additional Cultural Diversity Training				X			X				
Additional Legal Courses	X		X	X						X	
Probationary Period					X			X			X

## B. OVERALL SCORING OF POLICY SAFEGUARDS

During the policy analysis, this researcher awarded points to the state police organization for each policy safeguard implemented associated with the protective measure identified. Additionally, each policy safeguard received three points for implementation. Two of the policy safeguards offered an opportunity to capture the thoroughness of the implementation by the state police organization. In addition, one to three additional points were awarded depending on the extent of implementation for the policy safeguard. The collected value for the policy safeguard implemented by each state police organization is recorded in Appendix B. The maximum potential score for fully implementing all of the policy safeguards identified was 96 points. The highest point value is 74 points for state police organization no. 11, and the lowest score is 36 points for state police organization no. 6. Figure 2 illustrates the points assessed for each state police organization participating in the focus group.

Figure 2. Policy Safeguard Scoring



### **C. CREATING PERCENTAGES FOR IMPLEMENTATION OF POLICY SAFEGUARDS**

To compare the seven major categories of policy safeguards, the researcher calculated a percentage for each category to clarify the level of implementation by the state police organizations participating in the focus group. The researcher used the formula of  $A/B=C$  to calculate the percentage. Then, policy safeguard points for each category (A) was divided by the total number of potential points that could have been achieved in that category (B), resulting in a percentage for implementation of a policy safeguard category (C). Table 9 illustrates the percentages for the seven major categories of policy safeguards implemented by the respective state police organizations.

The researcher further classified the percentages for implementation of the seven major categories established in Table 9 as high implementation (76 percent–100 percent), medium implementation (51 percent–75 percent), and low implementation (0 percent–50 percent). This classification is to assist with the comparison of the policy safeguards across the seven major categories.

Table 9. Percentage of Implementation for Each Policy Safeguard

State Police Agencies	1	2	3	4	5	6	7	8	9	10	11	Avg
Audiovisual Recordings of Traffic Stops	44	39	83	67	67	39	94	67	67	61	56	62
Transparency by Documenting Justification of Personnel Action	75	50	100	100	50	75	50	100	100	75	100	80
Criminal Investigative Reports Completed	67	100	100	100	100	100	100	100	100	100	100	97
Document Response to Requests for Vehicle Searches	50	100	50	100	50	100	50	100	50	100	100	77
Racial Statistical Data Collected by Personnel	80	20	80	80	0	0	0	60	80	20	80	45
Calculates Hit Rates of Personnel	0	0	0	40	0	0	0	0	0	0	100	13
Identified Procedure to Select Personnel	33	29	71	67	48	24	57	52	52	52	48	48
Average for Organization	50	48	69	79	45	48	50	68	64	58	83	
Implementation Rating												
High (76–100 )	1	2	4	4	1	2	2	3	3	2	5	2.6
Medium (51–75)	2	0	1	2	1	1	1	3	2	3	1	1.5
Low (0–50)	4	5	2	1	5	4	4	1	2	2	1	2.8

#### **D. ADDITIONAL CONSIDERATIONS**

At the conclusion of the focus group discussion, the group discussed two items that played a role in viewing highway interdiction as a legitimate strategy but were outside the realm of policy safeguards for highway interdiction identified in Appendix B. The first item was the role of law enforcement in the totality of the criminal justice system. Law enforcement personnel conducting highway interdiction operations do not operate in a vacuum. Rather, they are part of a criminal justice system built on a foundation of checks and balances for controlling the authority and legitimacy of government representatives. When law enforcement personnel identify criminal activity through highway interdiction operations, their actions are reviewed by prosecutors responsible for presenting criminal cases in court. Judges also evaluate the actions of law enforcement personnel to ensure the constitutional rights of defendants were respected and upheld. If the actions of law enforcement personnel are determined inappropriate during the process, the illegitimate behavior does not support a conviction in court.

The group also mentioned the role of organizational culture supportive of developing core values within state police organizations as important for clarifying expectation of performance by personnel conducting highway interdiction. Policy implementation must be supported by leadership with a top-to-bottom approach emphasizing that inappropriate or illegitimate behavior will not be tolerated. Personnel must understand that “doing the right thing” is mandatory and not negotiable.

## IV. PERSONNEL COMPLAINTS

Law enforcement organizations throughout the United States utilize personnel complaints to identify inappropriate behavior of personnel interacting with the public.<sup>197</sup> Sections, such as Internal Affairs, are created within organizations for the purpose of conducting investigations into “allegations of misconduct, corruption, inappropriate adherence to policies and procedures and to behavior, and matters so assigned by superior officers to ensure the professional integrity of the department and its members.”<sup>198</sup> The manner by which these investigations are conducted is important for fostering trust between the community and law enforcement personnel conducting operations.<sup>199</sup> Individuals in the community desire to be heard when identifying police misconduct in support of reinforcing professional police services.<sup>200</sup> In addition law enforcement personnel desire a system that treats them fairly when allegations surface.<sup>201</sup> Complaints of police misconduct must be investigated “through fair, thorough, accurate, impartial investigations” to achieve the goals of each group.<sup>202</sup>

Personnel complaints offer an opportunity for law enforcement organizations to track information to identify problematic patterns associated with the behavior of personnel conducting enforcement operations.<sup>203</sup> When law enforcement organizations measure and analyze statistical data associated with complaints, early detection of problematic behavior can offer leadership of organizations the ability to address concerns vocalized by the community.<sup>204</sup> Moreover, when law enforcement organizations implement corrective behavior during the early stages of detection, it can maintain the

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<sup>197</sup> International Association of Chiefs of Police, *Building Trust*.

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

<sup>201</sup> Ibid.

<sup>202</sup> Ibid.

<sup>203</sup> Ibid., 32.

<sup>204</sup> Ibid.

integrity of the organization and reinforce desired behaviors.<sup>205</sup> Furthermore, the complaint process should be accessible to the community with clearly defined procedures so community members understand and comprehend the fairness of the system.<sup>206</sup>

#### **A. DESCRIPTION OF STATISTICAL DATA COLLECTED**

The state police organizations participating in the focus group have all established procedures for members of the community to file complaints against personnel participating in highway interdiction operations. The policy safeguards discussed in Chapter III are designed to guide the actions of personnel while they perform traffic stops of vehicles traveling on the highways and to reinforce the legitimacy of highway interdiction as a strategy. When the interaction results in a problematic relationship, members of the community can file a complaint to have their concerns addressed.<sup>207</sup>

For this thesis, researcher examined personnel complaints from three categories for the purpose of determining the professionalism of law enforcement personnel conducting highway interdiction operations. The literature review revealed allegations of racial profiling and the improper searching of vehicles were a significant concern voiced by critics of highway interdiction as a legitimate strategy; therefore, both categories were included.<sup>208</sup> Unprofessional or rude behavior was also included in the statistical data because this criticism is applicable to all aspects of behavior for all law enforcement personnel whether assigned to routine patrol or highway interdiction operations.

For the purpose of this thesis, the researcher collected all quantitative data for complaints filed against personnel in the three categories, regardless of the disposition of the allegation. The fact that an individual felt victimized by police misconduct is essential for the purpose of evaluating the relationship for trust between community members and actions conducted by law enforcement personnel. If a complaint is ultimately evaluated as unfounded or fabricated by leadership of the law enforcement organization, the

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<sup>205</sup> Ibid., 20.

<sup>206</sup> Ibid.

<sup>207</sup> Ibid.

<sup>208</sup> Buerger, "Racial Profiling," 744–745.

individual who filed the complaint feel as if he or she had been subjected to police misconduct. Therefore, the researcher included all complaints in the three categories in the evaluation process.

## **B. DATA ORGANIZATION AND ANALYSIS**

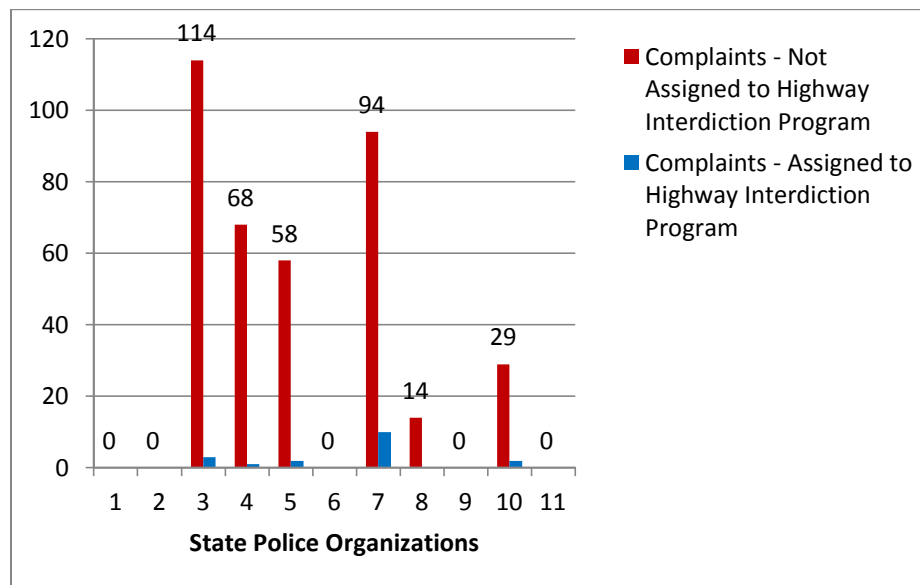
The state police organizations participating in the focus group provided data associated with personnel complaints for the organization involving three categories of racial profiling, illegal searches, and rudeness. The information was further separated into two subcategories for analysis, the total number of complaints for personnel assigned to the organization's highway interdiction program compared to personnel not assigned. There are other categories for complaints within these organizations; however, racial profiling, illegal searches, and rudeness are closely aligned with criticisms of highway interdiction programs. For that reason, personnel complaints analyzed for this thesis were restricted to the three categories.

It should be noted that one individual could file multiple complaints stemming from a single encounter with law enforcement personnel conducting highway interdiction operations. For example, an individual could allege that law enforcement personnel illegally searched his or her vehicle and were rude during the encounter. These allegations could be counted as two complaints. If more than one law enforcement member was involved in the encounter, the complaints could be investigated against all the personnel involved in the encounter resulting in a higher complaint count. Each law enforcement organization independently determines how complaints are investigated and counted.

The time period for statistical data varied between the state police organizations mainly due to requirements for gathering statistical data information by the Internal Affairs sections of the organization. State police organizations no. 3, no. 7, no. 8, and no. 10 provided 2015 data. State police organization no. 4 provided the most recent data available, which was from 2014. State police organization no. 5 provided multiple years of data for 2013–2016. Figure 3 illustrates the total number of complaints filed for each

state police organization able to provide the statistical data associated with racial profiling, illegal searches, and rudeness.

Figure 3. Total Number of Complaints



Five of the state police organizations could not produce the requested statistical data for separate reasons. State police organization no. 1 does not utilize the same personnel throughout the year to conduct highway interdiction operations. In 2015, that state police organization conducted 13 statewide highway interdiction operations deploying 303 troopers for 117 operational days. Due to the inconsistency in participation by law enforcement personnel, it would be impractical to include complaint information for this organization.

State police organization no. 2 is similar to state police organization no. 1 in its assignment of personnel to its highway interdiction program. The organizations routinely assign additional personnel to highway interdiction operations for operational effectiveness, which limits their ability to track complaints based solely on conducting highway interdiction. Thus, the statistical information was not available.

State police organizations no. 6 and no. 11 did not respond to requests for the information. State police organization no. 9 does not automate complaint information

specific to individuals assigned to its highway interdiction program. The process to document complaints against personnel assigned to the highway interdiction program would require internal affairs staff to hand search files. The statistical information was not available.

### **1. Analysis of Statistical Data for Allegations**

When examining the number of personnel complaints received by the state police organizations participating in the focus group, it is apparent that personnel conducting highway interdiction operations receive far fewer complaints as a total number received on the rest of the organization. The lower total amount of complaints can be explained by examining the relatively limited number of personnel assigned to the organization's highway interdiction program. All of the state police organizations participating in the focus group had less than five percent of the organization's law enforcement personnel assigned to their highway interdiction program. Therefore, the researcher further examined the statistical data for personnel complaints from each of the state police organizations who provided information to determine if the policy safeguards for highway interdiction helped minimizing the number of personnel complaints per individual received.

Furthermore, the researcher explored the three categories of racial profiling, illegal searches, and rudeness to determine the number of complaints per individual for each complaint category as compared to the total number of law enforcement personnel for the two classifications—personnel assigned to the organization's highway interdiction program compared to personnel not assigned.

For example, if 100 troopers were assigned to the state police organization highway interdiction program (B), and the group received 15 complaints for rudeness (A), then the complaint percentage for rudeness would be .150 (C).  $A/B = C$ . This number does not necessarily mean that 15 members of the highway interdiction program received complaints. Members could receive more than one complaint throughout the period specified, causing the overall number of members receiving a complaint to decline. For the purpose of this thesis, the number of complaints per individual is a

mechanism to allow for comparing data across the different state police organizations and highway interdiction programs of various sizes.

A = The number of complaints for a specific category.

B = The number of personnel assigned to the group.

C= Complaints per law enforcement officer associated with the group.

The results for each of the state police organizations that provided data associated with personnel complaints can be found in Table 10.

Table 10. Complaint Rating for State Police Organizations

State Police Organization No. 3 2015 Statistical Data	Complaints per Highway Interdiction Program Officer	Complaints per Non- Highway Interdiction Program Officer
Total	.500	.076
Racial Profiling Complaints	.167	.015
Illegal Searches Complaints	.167	.005
Rudeness Complaints	.167	.056
State Police Organization No. 4 2014 Statistical Data	Complaints per Highway Interdiction Program Officer	Complaints per Non- Highway Interdiction Program Officer
Total	.022	.064
Racial Profiling Complaints	.022	.010
Illegal Searches Complaints	.000	.008
Rudeness Complaints	.000	.046
State Police Organization No. 5 2013–2016 Statistical Data	Complaints per Highway Interdiction Program Officer	Complaints per Non- Highway Interdiction Program Officer
Total	.125	.073
Racial Profiling Complaints	.063	.014
Illegal Searches Complaints	.063	.013
Rudeness Complaints	.000	.046
State Police Organization No. 7 2015 Statistical Data	Complaints per Highway Interdiction Program Officer	Complaints per Non- Highway Interdiction Program Officer

State Police Organization No. 3 2015 Statistical Data	Complaints per Highway Interdiction Program Officer	Complaints per Non- Highway Interdiction Program Officer
Total	.455	.120
Racial Profiling Complaints	.046	.017
Illegal Searches Complaints	.227	.012
Rudeness Complaints	.182	.092
State Police Organization No. 8 2015 Statistical Data	Complaints per Highway Interdiction Program Officer	Complaints per Non- Highway Interdiction Program Officer
Total	.000	.010
Racial Profiling Complaints	.000	.000
Illegal Searches Complaints	.000	.000
Rudeness Complaints	.000	.010
State Police Organization No. 10 2015 Statistical Data	Complaints per Highway Interdiction Program Officer	Complaints per Non- Highway Interdiction Program Officer
Total	.143	.055
Racial Profiling Complaints	.071	.002
Illegal Searches Complaints	.000	.002
Rudeness Complaints	.071	.051

## 2. Limitations

As discussed in Chapter III, not all of the state police organizations participating in the focus group collect statistical data associated with traffic stops. This collection gap limits the researcher's ability to examine traffic stops to determine which interactions resulted in a perception of unfair treatment or police misconduct as practically impossible. For example, one of the state police organizations in the focus group stopped 12,031 vehicles in 2014 and received a total of two complaints. The number of complaints per traffic stop would be .0002. Because the state police organizations do not apply policy safeguards consistently, the researcher selected a common denominator between all of the state police organizations of personnel complaints for analysis. The

researcher analyzed the state police organization that stopped 12,031 vehicles in 2014 at .022 complaints per individual assigned to the highway interdiction program instead of the .0002 per traffic stop resulting in a personnel complaint.

There are several other limitations that must be discussed when evaluating personnel complaints filed against law enforcement personnel conducting highway interdiction operations. An analysis of statistical data for complaints provided by the state police organizations indicated that very few individuals have filed complaints when encountering personnel assigned to highway interdiction programs. As previously discussed, the majority of highway interdiction programs have a relatively limited number of personnel assigned to the organization's highway interdiction program, resulting in the low numbers of complaints. However, any complaint filed against law enforcement personnel conducting highway interdiction can have a significant impact on the number of complaints per individual for the year.

For example, one of the state police organizations participating in study had one complaint of racial profiling filed for the year against law enforcement personnel conducting highway interdiction operations while the remaining members of the organization had 11. Due to the relatively small number of personnel in the highway interdiction program, the number of complaints per individual associated with the program was four times higher than the number of complaints per individual for the remaining members in the organization at 11. Leadership of the organization must understand that the disparity in the statistical data is just the beginning of comprehending the situation and that further information may be required. This situation is similar to Lorie Fridell's assessment of clarifying statistical data associated with the racial composition of drivers stopped for traffic violations; disparity can be measured, but it is difficult to identify the cause of the disparity.<sup>209</sup>

The low number of complaints filed against personnel conducting highway interdiction operations identified in the statistical data provided by the focus group could be overlooked by the leadership of the organization. One complaint for racial profiling

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<sup>209</sup> Fridell, *By the Numbers*, 27.

may not gain the attention of leadership, obscuring its ability to grasp the situation. Thereby, the law enforcement organization would continue conducting highway interdiction operations without truly comprehending the potential negative effects of action undertaken by personnel conducting highway interdiction.

Furthermore, the lack of situational awareness can become problematic when attempting to establish what the public perceives as legitimate behavior for highway interdiction operations. As with policy safeguards, all complaints do not have the same impact on the relationship between the law enforcement organization and the members of the community. The traffic stop involving Robert Wilkins in 1992 certainly affected operations of the Maryland State Police and resulted in a consent decree requiring policy modifications associated with racial profiling.<sup>210</sup> Certainly, the number of complaints received is important to leadership for situational awareness, but a single complaint can have a significant impact.

Another limitation for statistical data associated with personnel complaints relates to the community's acceptance of the process for filing complaints. If community members do not feel they have a voice in the process, they will not file complaints expressing their concerns.<sup>211</sup> In addition, community members may also fear retaliation from law enforcement in future interactions and avoid expressing their concerns.<sup>212</sup> Regardless the reason, the lack of involvement by the community in the complaint process can limit the effectiveness of law enforcement organizations to properly interpret the community's concerns if they only rely on complaints.

The inability of law enforcement organizations to provide clear and concise definitions of each category is another limitation for examining the total number of complaints. For example, a member of the community contacts the law enforcement organization to express concerns over the actions of personnel conducting enforcement

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<sup>210</sup> Rice and White, *Race, Ethnicity, and Policing*, 162.

<sup>211</sup> International Association of Chiefs of Police, *Building Trust*, 16.

<sup>212</sup> U.S. Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department* (Washington, DC: U.S. Department of Justice, Civil Rights Division, 2016), <https://www.justice.gov/opa/file/883366/download>, 118.

operations. Was the action of personnel in this incident rude or unsatisfactory job performance? The classification of unsatisfactory job performance would not be counted in this thesis for exploring personnel complaints to measure the effectiveness of highway interdiction. Unsatisfactory job performance complaints were eliminated from consideration because numerous actions by law enforcement personnel could be classified in this category that are unrelated to encounters with the public.

A supervisor investigating the complaint has considerable discretion in reviewing the totality of the circumstances and categorizing the complaint. At times, the supervisor may determine that the circumstances surrounding the encounter between the community member and personnel involved does not warrant an administrative investigation, which results in no complaint filed. The supervisor could have concluded that the member of the community was contacting the law enforcement organization to gather more information for a better understanding of the circumstances instead of actually desiring to file a personnel complaint. Again, no complaint is filed.

The final limitation for discussion is the missing information from the state police organizations unable to provide personnel complaint information for personnel assigned to conduct highway interdiction operations. Five of the state police organizations were unable to provide information associated with complaints for personnel assigned to their organization's highway interdiction program. This situation has created a gap in the analysis of personnel complaints for highway interdiction and weakens the overall analysis of policy safeguard implemented.

## **V. IMPLEMENTATION**

The evolution of policy safeguards such as audio and video recording of traffic stops demonstrates a transition in law enforcement from simply documenting evidence to capturing the totality of an encounter between law enforcement personnel and individuals stopped for traffic violations. Additional policy safeguards have been developed to document actions of personnel conducting highway interdiction operations to demonstrate more transparency in the decision-making process. As demonstrated in Figure 3 of Chapter IV, a low number of complaints are filed against personnel conducting highway interdiction operations as compared to the overall number of complaints filed in the state police organizations participating in the focus group. As such, early warning tracking systems designed around complaints may not be the most effective strategy for alerting organizational leadership of potential problems concerning the appearance in legitimacy by citizens.

Law enforcement organizations conducting highway interdiction operations must seek an effective strategy for implementing policy safeguards to guide the actions of personnel. In a study on bias-based policing conducted by Auburn University Montgomery, Center for Government and Public Affairs studying the Commonwealth of Virginia, researchers stated, “Far too frequently, the implementation and evaluation stages are ignored, people become distracted, other issues take center stage, there is a lack of commitment, and/or there always seems to be insufficient funds to complete the project.”<sup>213</sup> So, what is available to help law enforcement organizations adapt an effective implementation strategy for policy safeguards associated with highway interdiction operations that is capable of addressing concerns?

### **A. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION**

The Civil Rights Division of the DOJ was created through passage of the Civil Rights Act of 1957 and was designed to protect the “civil and Constitutional rights of all

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<sup>213</sup> Center for Government and Public Affairs, *Bias-based Policing*, 5.

Americans.”<sup>214</sup> The division is responsible to enforce federal law protecting the rights of Americans “on the basis of race, color, sex, disability, religion, familial status and national origin.”<sup>215</sup> The U. S. attorney general was granted authority by Congress under 42 U.S.C. § 14141 to initiate reforms of law enforcement organizations displaying undesirable behaviors through litigation.<sup>216</sup> Within the Civil Rights Division, the Special Litigation Section conducts investigations of law enforcement organizations displaying “patterns or practices” of police misconduct violating the civil or constitutional rights of individuals.<sup>217</sup>

In 2014 and 2015, the DOJ initiated two investigations into allegations of police misconduct centered on the controversial deaths of Michael Brown and Freddie Gray. DOJ published the investigation of the Ferguson Police Department on March 4, 2015 and took approximately 18 months to complete identifying violations in the constitutional rights provided to citizens under the First, Fourth, and Fourteenth Amendments.<sup>218</sup> The investigation into the Baltimore City Police Department took approximately 15 months to complete, and DOJ published it on August 10, 2016.<sup>219</sup> In the Baltimore city investigation, the DOJ was able to sustain violations of the U.S. Constitution by law enforcement personnel conducting enforcement operations.<sup>220</sup> Although the investigations analyzed all aspects of the two police departments, it is important to note the application of their findings to highway interdiction operations.

In both investigations, the DOJ examined the practices of the police departments when engaging in traffic stops, searching vehicles, and making arrests. Additionally, the

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<sup>214</sup> U.S. Department of Justice, “About the Division,” accessed August 11, 2016, <https://www.justice.gov/crt/about-division>.

<sup>215</sup> Ibid.

<sup>216</sup> Rushin, “Federal Enforcement of Police Reform,” 3189–3192.

<sup>217</sup> U.S. Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department* (Washington, DC: U.S. Department of Justice, Civil Rights Division, 2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf), 1.

<sup>218</sup> Ibid.

<sup>219</sup> U.S. Department of Justice, *Investigation of the Baltimore City*, 20.

<sup>220</sup> Ibid., 163.

DOJ examined the enforcement strategies deployed by each organization to determine the potential impact on members of the minority community. In Ferguson, DOJ examined statistical data associated with traffic stops conducted by police department personnel from 2010 to 2014 to identify the racial composition of drivers.<sup>221</sup> A significant majority of drivers stopped by law enforcement personnel were black, accounting for 85 percent of the vehicle stops although the external benchmark for the black population of Ferguson was 67 percent.<sup>222</sup> Black drivers were subjected to vehicle searches at a rate twice as high as white drivers, although black drivers were 26 percent less likely to be in possession of contraband.<sup>223</sup> Interestingly, blacks accounted for 90 percent of the citations and 93 percent of the arrests.<sup>224</sup>

The DOJ also examined traffic stop data in Baltimore for the period of 2010 to 2015.<sup>225</sup> As in Ferguson, black drivers represented a significant percentage of drivers stopped at 82 percent.<sup>226</sup> An external benchmark of 60 percent represents the black population in Baltimore city of driving age.<sup>227</sup> The report acknowledged some of the difficulties associated with determining appropriate benchmarks for the black population.<sup>228</sup> The racial percentage of drivers on a roadway varies due to the racial composition of the driving population living in particular areas of Baltimore or when drivers from other locations within the metropolitan area enter Baltimore.<sup>229</sup> The DOJ determined the statistical data associated with vehicle searches to be “implausible” due to the exceptionally low search rate of 0.5 percent for vehicles stopped.<sup>230</sup>

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<sup>221</sup> U.S. Department of Justice, *Investigation of the Ferguson Police*, 4.

<sup>222</sup> *Ibid.*

<sup>223</sup> *Ibid.*

<sup>224</sup> *Ibid.*

<sup>225</sup> U.S. Department of Justice, *Investigation of the Baltimore City*, 52.

<sup>226</sup> *Ibid.*

<sup>227</sup> *Ibid.*

<sup>228</sup> *Ibid.*

<sup>229</sup> *Ibid.*

<sup>230</sup> *Ibid.*, 53.

Representatives from the Baltimore City Police Department acknowledged that search information is not accurately captured.<sup>231</sup> Even so, the DOJ was able to calculate the hit rate for Baltimore City Police Department personnel to some degree considering the inconsistency in reporting.<sup>232</sup> The hit rate for black drivers at 3.9 percent was half of the hit rate for other searches calculated at 8.5 percent.<sup>233</sup> When the race of an arrestee was identified, blacks accounted for 86 percent of charges filed by Baltimore City Police Department personnel.<sup>234</sup>

In both investigations, the DOJ examined statistical data and used it to examine the practices of the law enforcement organizations policing their respective communities. The report from the DOJ on the Ferguson Police Department was finalized on March 4, 2015, and it stated, “Our investigation has revealed that these disparities occur, at least in part, because of unlawful bias against and stereotyping about African Americans.”<sup>235</sup> The DOJ report also criticized Ferguson Police Department for participating in the city’s emphasis on asset seizure during traffic stops, generating revenue to meet budget shortfalls.<sup>236</sup>

Similar criticisms have been alleged against law enforcement organizations conducting highway interdiction operations that seize currency as part of an asset forfeiture program.<sup>237</sup> Finalized on August 10, 2016, the report from the DOJ on the Baltimore City Police Department stated, “There is reasonable cause to believe that the Baltimore City Police Department engages in a pattern or practice of conduct that violates the Constitution or federal law.”<sup>238</sup> Moreover, the report identified the lack of supervisory oversight to guide the actions of personnel as a contributing factor “leading

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<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid., 55.

<sup>235</sup> U.S. Department of Justice, *Investigation of the Ferguson Police*, 5.

<sup>236</sup> Ibid., 2.

<sup>237</sup> Michael Sallah et al., “Aggressive Police Take Hundreds of Millions of Dollars from Motorists Not Charged with Crimes,” *Washington Post*, September 6, 2014, <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>.

<sup>238</sup> U.S. Department of Justice, *Investigation of the Baltimore City*, 163.

directly to a broad spectrum of Constitutional and statutory violations.”<sup>239</sup> Both reports identified negative effects on law enforcement’s relationship with the minority community, particularly on trust, as a result of abusive patterns or practices.

The systematic problems identified in each report from the DOJ can have a significant impact on reforming the practices and patterns of the Ferguson and Baltimore City police departments. The DOJ report recommended many of the safeguards discussed in Chapter III as corrective measures for the Ferguson Police Department.<sup>240</sup> These include increasing statistical gathering of stops, vehicle searches, and arrest data; requiring the actions of personnel be reviewed by supervision; implementing procedures to review statistical data on regular intervals; and analyzing racial compositions of drivers stopped by law enforcement to identify disparities or problematic patterns.<sup>241</sup> The zero-tolerance enforcement strategies have disproportionally targeted the minority community resulting in a deterioration of the relationship between the police department and the minority community.<sup>242</sup> Finally, the report emphasized the need of the Baltimore City Police Department to improve community relationships through effective policing designed to enhance trust.<sup>243</sup>

The DOJ has the ability to influence national standards for law enforcement strategies, such as highway interdiction; however, there are limitations. The DOJ has averaged three investigations each year with less than one full-scale investigation annually.<sup>244</sup> Considering that there are more than 18,000 police departments in the United States, the effectiveness of the DOJ to collaborate and implement policy safeguards for highway interdiction as part of a nationwide strategy is limited.<sup>245</sup> Full-scale investigations simply require too much time to complete. Safeguards are part of the

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<sup>239</sup> Ibid., 21.

<sup>240</sup> U.S. Department of Justice, *Investigation of the Ferguson Police*, 92.

<sup>241</sup> Ibid.

<sup>242</sup> U.S. Department of Justice, *Investigation of the Baltimore City*, 62.

<sup>243</sup> Ibid., 163.

<sup>244</sup> Rushin, “Federal Enforcement of Police Reform,” 3193.

<sup>245</sup> U.S. Department of Justice, *National Sources of Law Enforcement*, 1.

recommendations by the DOJ, but they are narrowed to improve the patterns or practices of the law enforcement organization under investigation, specifically after the situation has deteriorated to the point that complaints are filed.

## **B. END RACIAL PROFILING ACT**

In 1997, Michigan Congressman John Conyers, Jr. introduced a bill into the 105th Congress called the “Traffic Stop Statistics Act of 1997.”<sup>246</sup> The bill was designed to “provide for the collection of several categories of data on each traffic stop, including the race of the driver and whether and why a search was performed.”<sup>247</sup> One of the aspirations of the bill was to establish a nationwide platform for analyzing statistical data associated with traffic stops to determine if there is a disparity that supports accusations of racial profiling as expressed by the minority community.<sup>248</sup> The act passed in the House of Representatives but as no action was taken in the Senate’s Judiciary Committee, so the bill died.<sup>249</sup> Although the act did not pass, states were inspired to pass their own legislation requiring law enforcement organizations to gather statistical data associated with traffic stops.<sup>250</sup> By 2007, 25 states passed legislation associated with statistical data from traffic stops conducted by law enforcement organizations.<sup>251</sup>

Even though his proposed bill did not pass, Congressman Conyers has continued to pursue his efforts for requiring law enforcement to gather statistical data nationally.<sup>252</sup> In 2001, he proposed legislation known as the “End Racial Profiling Act,” which also has failed to pass.<sup>253</sup> When the 114th Congress gathered in Washington, DC, Congressman Conyers reintroduced the End Racial Profiling Act on April 22, 2015.<sup>254</sup> The act would

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<sup>246</sup> Rice and White, *Race, Ethnicity, and Policing*, 61.

<sup>247</sup> *Ibid.*

<sup>248</sup> *Ibid.*

<sup>249</sup> *Ibid.*, 61–62.

<sup>250</sup> *Ibid.*, 62.

<sup>251</sup> Heaton, “Understanding the Effects of Antiprofiling Policies,” 29.

<sup>252</sup> Rice and White, *Race, Ethnicity, and Policing*, 157–158.

<sup>253</sup> *Ibid.*, 158.

<sup>254</sup> End Racial Profiling Act 2015, 1.

mandate safeguards such as statistical data gathering, grant sponsored training, and investigations of racial profiling allegations.<sup>255</sup> Under the act, the U.S. attorney general would oversee the program and possess the authority to deny law enforcement organizations grant funding if the U.S. attorney general determines it appropriate.<sup>256</sup> Due to budget restrictions negatively affecting operations, the ability to control grant funding can influence law enforcement organization throughout the nation.<sup>257</sup>

Legislation has proven to be a difficult path for implementation of safeguards to guide the actions of law enforcement personnel. As previously noted, 25 states have passed legislation requiring law enforcement personnel to gather statistical data associated with traffic stops;<sup>258</sup> however, the type of information collected varies from state to state. There is no national standard for collection or review of statistical data; therefore, the states collect information associated with traffic stops differently using standards, such as all traffic stops, when a citation is issued, an individual is arrested, or a vehicle is searched.<sup>259</sup> Moreover, several states do not collect any statistical data at all.<sup>260</sup> This situation reflects the findings identified by the focus group when discussing how their organizations collect statistical data associated with highway interdiction operations. State police organizations are performing this task differently with varying abilities to identify disparities for comparison to external or internal benchmarking.

### C. ACCREDITATION

Organizational accreditation through CALEA offers law enforcement organizations an opportunity to have policies and procedures reviewed for best practices

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<sup>255</sup> Ibid., 9–14.

<sup>256</sup> Ibid., 7–12.

<sup>257</sup> U.S. Department of Justice, Office of Community Policing Services, *The Impact of the Economic Downturn on American Police Agencies* (Washington, DC: U.S. Department of Justice, Office of Community Policing Services, 2011), [http://www.ncdsv.org/images/COPS\\_ImpactOfTheEconomicDownturnOnAmericanPoliceAgencies\\_10-2011.pdf](http://www.ncdsv.org/images/COPS_ImpactOfTheEconomicDownturnOnAmericanPoliceAgencies_10-2011.pdf), 34.

<sup>258</sup> Heaton, “Understanding the Effects of Antiprofiling Policies,” 29.

<sup>259</sup> Rice and White, *Race, Ethnicity, and Policing*, 163.

<sup>260</sup> Ibid.

and evaluation of performance.<sup>261</sup> This process could help establish a national standard for policy safeguards associated with highway interdiction operations, which could be used to minimize accusations of improper practices against personnel. However, there are some barriers to accreditation that may impede the ability to implement policy safeguards for highway interdiction operations.

CALEA has a list of 463 standards for accreditation, and law enforcement organizations seeking accreditation must comply with all the mandatory standards, including 80 percent of “other-than-mandatory” standards, to receive the designation.<sup>262</sup> Bias-based policing is incorporated into CALEA standards under Standard 1.2.9 and requires law enforcement organizations to create reporting procedures to address the topic.<sup>263</sup> These reports are designed to convey the organization’s efforts to prohibit bias-based policing and improve transparency for law enforcement actions to the public.<sup>264</sup> Unfortunately, they do not directly focus on interdiction operations conducted on the highways. CALEA standard 52.1.5 addresses the requirement for law enforcement organizations to maintain annual reports for personnel complaints, as discussed in Chapter IV.<sup>265</sup> Law enforcement organizations are required to compile information associated with personnel complaints and make the information publicly available along with personnel in the organization.<sup>266</sup>

If policy safeguards for highway interdiction operations were implemented by the CALEA standards, it would simply be one of the 92 major categories currently undertaken by the law enforcement accreditation program.<sup>267</sup> Additionally, the accreditation process is usually managed by mid- to upper-level management, potentially

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<sup>261</sup> Teodoro and Hughes, “Socializer or Signal?,” 583.

<sup>262</sup> Ibid., 584.

<sup>263</sup> Richard R. Johnson, *8 Tips for Writing Biased-based Policing Reports* (Public Agency Training Council, Legal & Liability Risk Management, 2016), 1.

<sup>264</sup> Ibid.

<sup>265</sup> International Association of Chiefs of Police, *Building Trust*, 71.

<sup>266</sup> Ibid.

<sup>267</sup> Commission on Accreditation for Law Enforcement Agencies, “Standards Titles,” February 11, 2015, <http://www.calea.org/content/standards-titles>.

weakening the impact of accreditation on first-line supervisors and personnel actually performing the tasks.<sup>268</sup> It is essential organizations have effective communication clarifying priorities and organizational values for improving the comprehension of objectives by lower ranking personnel.<sup>269</sup>

Consideration should also be given to the study conducted by Manual Teodoro and Adam Hughes, which highlights the potential problems with accreditation.<sup>270</sup> Their study examined the effects of accreditation on the performance of law enforcement organizations and concluded that being accredited improved performance of organizations but organizations seeking accreditation were also able to demonstrate improved performance.<sup>271</sup> The fact that a law enforcement organization is seeking accreditation might be good enough to improve professionalism as opposed to only improving performance subsequently to accreditation.<sup>272</sup>

#### **D. THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING**

On December 18, 2014, President Obama issued Executive Order 13684 establishing a task force on twenty-first century policing with the mission to “identify best practices and otherwise make recommendations to the President on how policing practices can promote effective crime reduction while building public trust.”<sup>273</sup> The task force released its final report in May 2015, which emphasized the need to establish trust between law enforcement organizations and the communities they serve.<sup>274</sup> More importantly, the task force created a national dialogue to discuss critical issues confronting law enforcement.<sup>275</sup> Although the dialogue was focused on the profession of

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<sup>268</sup> Teodoro and Hughes, “Socializer or Signal?,” 586.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid., 586–589.

<sup>271</sup> Ibid., 589–590.

<sup>272</sup> Ibid., 589.

<sup>273</sup> U.S. Department of Justice, Office of Community Oriented Policing Services, *President’s Task Force on 21st Century Policing: One-year Progress Report* (Washington, DC: Office of Community Oriented Policing Services, 2016), <http://ric-zai-inc.com/Publications/cops-w0805-pub.pdf>, 1.

<sup>274</sup> President’s Task Force on 21st Century Policing, *Final Report*, 1.

<sup>275</sup> Ibid., iv.

law enforcement as a whole, organizations who participate in highway interdiction can apply the best practices it identified.

As law enforcement engaged in the war on drugs targeting drug trafficking organizations and dealers who negatively affected citizens' lives, the mindset of some law enforcement professionals shifted to incorporate a warrior mentality.<sup>276</sup> Law enforcement organizations deployed resources in high crime areas to reduce crime through proactive law enforcement strategies known for as zero-tolerance approach when stopping and searching individuals to identify criminal activity.<sup>277</sup> Citizens living in high-crimes areas with primarily minority populations felt law enforcement organizations were behaving like an "occupying force" instead of providing valuable services.<sup>278</sup> The task force identified the need for law enforcement organizations to establish a mindset of a guardian protecting citizens while fostering a relationship supportive of law enforcement action and trust.<sup>279</sup> This approach will help build a collaborative partnership with enhanced transparency and be complementary to viewing law enforcement strategies as legitimate.<sup>280</sup>

The task force also addressed oversight recommendations affecting many of the policy safeguard protections associated with highway interdiction operations.<sup>281</sup> The task force recommends that when encountering members of the community, law enforcement personnel need to be more transparent in the decision-making process so the motives and justification of law enforcement actions are apparent.<sup>282</sup> These efforts must be accompanied by procedures for controlling discretion by law enforcement personnel, which will increase the perception of law enforcement actions as legitimate and fair by the public.<sup>283</sup> Furthermore, this action will result in the public viewing law enforcement

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<sup>276</sup> Ibid., 1.

<sup>277</sup> U.S. Department of Justice, Civil Rights Division, *Investigation of the Baltimore City*, 24.

<sup>278</sup> President's Task Force on 21st Century Policing, *Final Report*, 1.

<sup>279</sup> Ibid.

<sup>280</sup> Ibid.

<sup>281</sup> Ibid., 9–18.

<sup>282</sup> Ibid., 10.

<sup>283</sup> Engel and Johnson, "Toward a Better Understanding," 615.

personnel as a legitimate authority and most likely obey laws.<sup>284</sup> The task force report also recommends law enforcement organizations cultivate organizational culture supportive of incorporating the principles of procedural justice with “doing the right things” so a collaborative partnership between law enforcement personnel and members of the community can flourish.<sup>285</sup>

Training was another aspect well represented in the final report from the president’s task force, and there has been progress achieved toward this.<sup>286</sup> Specifically, the task force recommended that law enforcement personnel undertake training to eliminate explicit and implicit biases from affecting the decision-making process when conducting law enforcement actions.<sup>287</sup> Since the final report was published, law enforcement organizations have been participating in Fair and Impartial Training, sponsored by DOJ’s Community Oriented Policing Services Division.<sup>288</sup> According to a principal instructor of the program, Anna Laszlo, the science based training demonstrates that “policing based on stereotypes and biases is ineffective, unsafe, and unjust.”<sup>289</sup> When left uncorrected, the same concerns that have been expressed by the minority community, as discussed in Chapter I, lead to allegations of police misconduct and racial profiling.<sup>290</sup> On December 18, 2015, the White House reported that 50,000 law enforcement personnel have been trained on fair and impartial policing and procedural justice.<sup>291</sup>

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<sup>284</sup> Office of the Attorney General, New Jersey, *Final Report of the State Police Review Team* (Trenton, NJ: Office of the Attorney General, 1999), [http://www.state.nj.us/lps/Rpt\\_ii.pdf](http://www.state.nj.us/lps/Rpt_ii.pdf), 10.

<sup>285</sup> *Ibid.*, 14.

<sup>286</sup> President’s Task Force on 21st Century Policing, *Final Report*, 11.

<sup>287</sup> *Ibid.*, 10–11.

<sup>288</sup> Ross et al., *Traffic Stop Data Analysis*, x.

<sup>289</sup> Lorie A. Fridell and Sandra Brown, “Fair and Impartial Policing: A Science-Based Approach,” *The Police Chief*, June 2015, <http://www.policchiefmagazine.org/fair-and-impartial-policing-a-science-based-approach/>.

<sup>290</sup> *Ibid.*

<sup>291</sup> Ronald L. Davis, “Law Enforcement Leads the Change,” *White House* (blog), December 18, 2015, <https://www.whitehouse.gov/blog/2015/12/18/law-enforcement-leads-change>.

The task force recognized that the recommendations needed an implementation strategy to have long-lasting impact on policing in the 21st century.<sup>292</sup> A new initiative was launched within the DOJ Community Oriented Policing Services, called the Office of Policing Practices and Accountability Initiative, will be responsible for implementing the recommendations of the President’s Task Force on 21st Century Policing.<sup>293</sup> The federal government has provided funding of over \$160 million dollars to law enforcement organizations for the implementation of recommendations associated with the task force.<sup>294</sup> In addition, the Police Data Initiative was created to improve the “uses of data on police-citizen interactions that increase transparency, build community trust, and strengthen accountability.”<sup>295</sup> Additional efforts have incorporated the Public Safety Data Portal to assist the public with understanding police oriented data and monitor law enforcement organizations participating in the Police Data Initiative.<sup>296</sup> As of April 2016, 53 jurisdictions nationwide are participating in the Police Data Initiative.<sup>297</sup>

#### **E. DOMESTIC HIGHWAY ENFORCEMENT INITIATIVE**

In 1988, Congress created the High Intensity Drug Trafficking Areas (HIDTA) Program through the passage of the Anti-Drug Abuse Act.<sup>298</sup> The program was placed in the Office of National Drug Control Policy (ONDCP) under the Executive Office of the President with the specific strategy to “achieve the long-term goal of reducing drug trafficking and drug production in the United States.”<sup>299</sup> Regional HIDTAs were created to facilitate collaborative partnerships with federal, state, local, and tribal law enforcement organizations to coordinate resources, share intelligence, and improve

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<sup>292</sup> President’s Task Force on 21st Century Policing, *Final Report*, 69.

<sup>293</sup> U.S. Department of Justice, *President’s Task Force on 21st Century Policing*, 10.

<sup>294</sup> Davis, “Law Enforcement Leads the Change.”

<sup>295</sup> U.S. Department of Justice, *President’s Task Force on 21st Century Policing*, 9.

<sup>296</sup> *Ibid.*, 10.

<sup>297</sup> *Ibid.*

<sup>298</sup> Office of National Drug Control Policy, *National Drug Control Budget: FY 2017 Funding Highlights* (Washington, DC: Office of National Drug Control Policy, 2016), [https://www.whitehouse.gov/sites/default/files/ondcp/press-releases/fy\\_2017\\_budget\\_highlights.pdf](https://www.whitehouse.gov/sites/default/files/ondcp/press-releases/fy_2017_budget_highlights.pdf), 6.

<sup>299</sup> Executive Office of the President, *High Intensity Drug Trafficking Areas*, 3.

operational effectiveness.<sup>300</sup> Currently, there are 28 regional HIDTAs covering 63.5 percent of the populations of the United States.<sup>301</sup> For fiscal year 2017, the HIDTA program is budgeted to receive \$196.4 million to fulfill its mission.<sup>302</sup>

A discretionary enforcement project undertaken by HIDTA is the DHE initiative.<sup>303</sup> The strategy of the initiative “is based on collaborative, intelligence-led policing to enhance coordinated, multi-jurisdictional operational law enforcement efforts on interstate highways specifically identified as drug trafficking corridors.”<sup>304</sup> The DHE initiative remains focused on the operational effectiveness of law enforcement organizations conducting highway interdiction on the nation’s interstate system.<sup>305</sup> Assistance to highway interdiction programs is provided through funding of equipment, intelligence, and training. Annually, the DHE initiative sponsors a national interdiction conference to discuss critical issues confronting the strategy of highway interdiction accompanied with best practices supportive of maintaining the perception of the strategy as a legitimate law enforcement tactic.

In 2014, leadership within the DHE initiative instituted proactive measures to affect the professionalism of law enforcement personnel conducting highway interdiction operations through the “21st Century Interdiction Code of Conduct”<sup>306</sup> (see Figure 4). The code was created in response to complaints of police misconduct from alleged overly aggressive law enforcement tactics associated with asset forfeiture during highway interdiction operations involving currency seizures.<sup>307</sup> The oversight measure was implemented to protect constitutional and civil rights of drivers being stopped by law

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<sup>300</sup> Ibid., 1–3.

<sup>301</sup> White House, “High Intensity Drug Trafficking Areas (HIDTA) Program,” accessed August 13, 2016, <https://www.whitehouse.gov/ondcp/high-intensity-drug-trafficking-areas-program>.

<sup>302</sup> Office of National Drug Control Policy, *National Drug Control Budget*, 6.

<sup>303</sup> Executive Office of the President, *High Intensity Drug Trafficking Areas*, 6–7.

<sup>304</sup> Ibid., 7.

<sup>305</sup> Executive Office of the President, *High Intensity Drug Trafficking Areas*, 7.

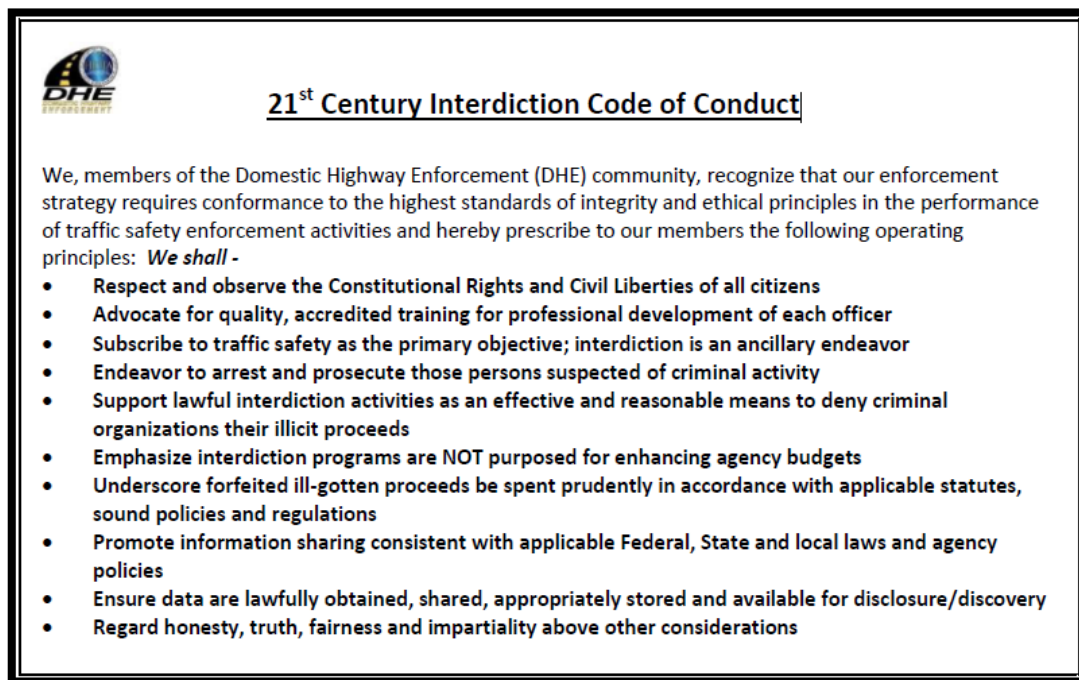
<sup>306</sup> Robert O’Harrow, Jr., “Federal Officials Issue New Code of Conduct for Police Highway Seizures,” *The Washington Post*, November 21, 2014, <https://www.washingtonpost.com/news/federal-eye/wp/2014/11/21/federal-officials-issue-new-conduct-rules-for-police-highway-seizures/>.

<sup>307</sup> Ibid.

enforcement personnel.<sup>308</sup> Kurt Schmid, HIDTA Director of the Chicago Office, emphasized the importance of highway interdiction associated with public safety but worried “some officers may be using the technique to pad local police budgets through forfeited proceeds rather than pursuing criminal cases or focusing on traffic safety.”<sup>309</sup>

The 10 operating principles of the code of conduct stress the importance of law enforcement personnel recognizing their responsibility to perform highway interdiction operations at “the highest standards of integrity and ethical principles in the performance of traffic safety enforcement activities.”<sup>310</sup> The code of conduct represents a clear indication from the DHE leaders that they are willing to implement protective measures to maintain perception of highway interdiction as a legitimate strategy for law enforcement organizations.

Figure 4. 21st Century Interdiction Code of Conduct<sup>311</sup>



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<sup>308</sup> Ibid.

<sup>309</sup> Ibid.

<sup>310</sup> Ibid.

<sup>311</sup> Source: O’Harrow, Jr., “Federal Officials Issue New Code.”

## 1. Implementation

As discussed in this chapter, transparency is a critical component of establishing trust between law enforcement organizations and the communities they serve.<sup>312</sup> Law enforcement organizations are transforming toward a new philosophy of policing that will emphasize a mindset as a community guardian as opposed to that of a warrior against criminal activity.<sup>313</sup> The culture of law enforcement organizations will play a vital role in the process as leaders determine the best course of action for improving relationships between personnel and the community.<sup>314</sup>

Leadership of law enforcement organizations is capable of developing core values to clarify the expectation of performance by personnel.<sup>315</sup> These core values guide the actions of personnel as an organization in respect for compliance with policies, procedures, and the law.<sup>316</sup> Law enforcement organizations with a professional organizational culture contain personnel supportive of the core values associated with positive institutional integrity.<sup>317</sup>

The opposite is true for law enforcement organizations with troublesome organizational cultures. Personnel do not necessarily value compliance with policies, procedures, and the law as part of their daily activities<sup>318</sup> (see Figure 5). The acceptance of the law enforcement organization's core values by personnel conducting highway interdiction operations will affect the organization's culture. In addition, personnel engaged in "doing the right thing" will increase trust between law enforcement organizations and the communities they serve.<sup>319</sup>

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<sup>312</sup> President's Task Force on 21st Century Policing, *Final Report*, 1.

<sup>313</sup> *Ibid.*

<sup>314</sup> *Ibid.*, 14.

<sup>315</sup> Douglas B. Merel, "Leadership Spotlight: Effective Leadership through Institutional Integrity," *FBI Law Enforcement Bulletin*, July 2010, <https://leb.fbi.gov/2010/july/leadership-spotlight-effective-leadership-through-institutional-integrity>.

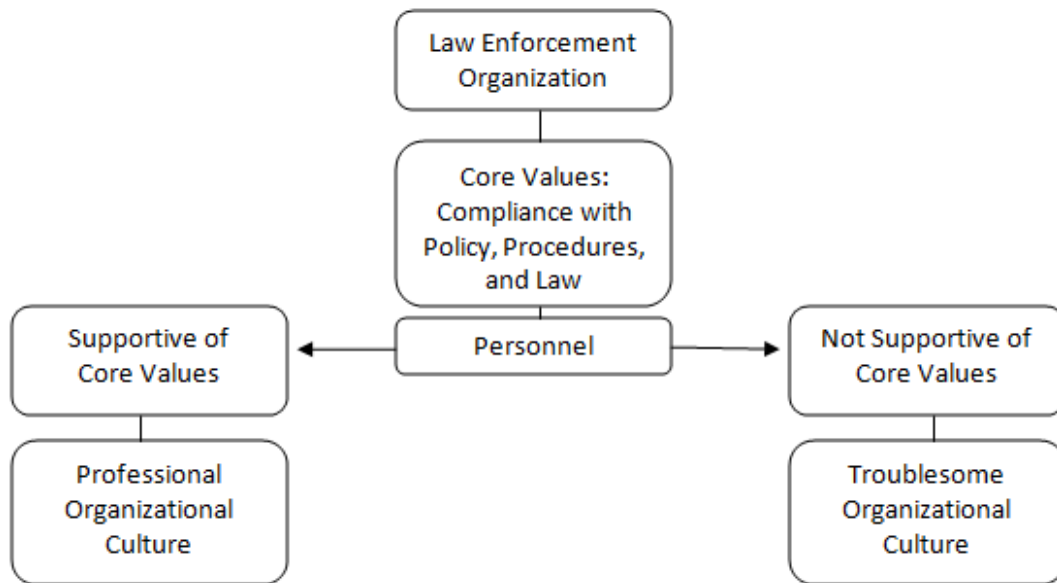
<sup>316</sup> *Ibid.*

<sup>317</sup> *Ibid.*

<sup>318</sup> *Ibid.*

<sup>319</sup> President's Task Force on 21st Century Policing, *Final Report*, 1.

Figure 5. Law Enforcement Organizations and Core Values



The NAACP testified before the President’s Task Force on 21st Century Policing that there is a “critical need to strengthen public trust and foster strong relationships and mutual respect between local law enforcement and the communities they protect.”<sup>320</sup> Video recordings have been proven to affect behavior of law enforcement personnel and citizens when those individuals realize their actions are being recorded.<sup>321</sup> Video is just one policy safeguard to help improve transparency in the decision-making process to justify the actions of law enforcement personnel conducting highway interdiction operations. Other policy safeguards will have to be evaluated by organizational leadership to determine if implementation would be beneficial to the overall goal of improving community relationships as a guardian mindset materializes.

<sup>320</sup> Ifill, *Statement by the NAACP*, 2.

<sup>321</sup> U.S. Department of Justice, Office of Community Oriented Policing Services, *Implementing a Body-worn Camera Program: Recommendations and Lessons Learned* (Washington, DC: U.S. Department of Justice, 2014), <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>, 6.

## 2. Synthesis of Implementation Strategies

As previously mentioned, an implementation strategy is essential for the success of policy safeguards for highway interdiction operations to be effective over a sustained period of time.<sup>322</sup> Poor execution of implementation strategies can occur when leaders ignore problems identified or simply do not have the fortitude to see the implementation phase through to completion.<sup>323</sup> Each of the five implementation strategies previously discussed in this chapter have unique characteristics that can contribute to the overall success of highway interdiction being viewed as a legitimate strategy for law enforcement organizations in the United States. Unfortunately, none of them contain all of the characteristics needed guide the actions of highway interdiction personnel on a daily basis; however, each of them can contribute to the process of envisioning a new course of action for highway interdiction operations.

The most extensive reviews of police misconduct are conducted by the DOJ's Civil Rights Division, as demonstrated by the comprehensive reports filed on the police departments of Ferguson and Baltimore. The full-scale reviews encompassed numerous aspects of enforcement actions undertaken by the law enforcement personnel to identify patterns and practices associated with law enforcement action. During the reviews, DOJ personnel interacted with members of the police community, citizens living in the affected areas, elected officials, civic and religious leaders, and members of advocacy groups.<sup>324</sup> The reviews also included ride-alongs to monitor the interactions of law enforcement personnel with the community.<sup>325</sup> This characteristic is important to include with implementation strategies for policy safeguards guiding the actions of law enforcement personnel conducting highway interdiction operations. Through communication with leaders representing various aspects of society, problems can be identified, ultimately leading to potential resolutions.<sup>326</sup>

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<sup>322</sup> Center for Government and Public Affairs, *Bias-based Policing*, 5.

<sup>323</sup> *Ibid.*

<sup>324</sup> U.S. Department of Justice, *Investigation of the Baltimore City*, 4.

<sup>325</sup> *Ibid.*

<sup>326</sup> *Ibid.*

Another important characteristic of the DOJ review included the analysis of statistical data to identify disparities in enforcement practices of the police departments investigated. The analysis of the statistical data was supported by efforts to determine the cause of the disparity and concludes that racial stereotyping and bias-based policing contributed to the problems.<sup>327</sup> The DOJ review of Baltimore mentioned the lack of policy safeguards as creating an atmosphere of abusive law enforcement practices by personnel conducting enforcement operations when interacting with the community.<sup>328</sup>

The next two implementation strategies have limited application to maintaining the perception of highway interdiction as a legitimate law enforcement practice. Although the bill has never passed, the End Racial Profiling Act demonstrates the importance of maintaining a dialogue for identifying minimum safeguards through legislation mandating compliance from law enforcement organizations. The citizens should be able to decide through constitutional representation what safeguards are necessary to protect their civil and constitutional rights. Several state and local jurisdictions have already implemented such laws for their protection.<sup>329</sup>

The accreditation process demonstrates that law enforcement organizations are willing to seek official designation as being capable of identifying national standards for performance.<sup>330</sup> The accreditation process is designed to identify if law enforcement organizations are complying with policies involving nationally recognized best practices.<sup>331</sup> Additionally, the accreditation process is capable of conveying what is important to the organizational leadership so lower ranks can comprehend organizational values to obtain compliance with policies.<sup>332</sup>

The President's Task Force on 21st Century Policing has several characteristics that should be considered as part of an implementation strategy for highway interdiction.

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<sup>327</sup> U.S. Department of Justice, *Investigation of the Ferguson Police*, 5.

<sup>328</sup> U.S. Department of Justice, Civil Rights Division, *Investigation of the Baltimore City*, 21.

<sup>329</sup> Heaton, "Understanding the Effects of Antiprofiling Policies," 29.

<sup>330</sup> Teodoro and Hughes, "Socializer or Signal?," 584.

<sup>331</sup> *Ibid.*, 583.

<sup>332</sup> *Ibid.*, 586.

First, law enforcement organizations must embrace the guardian mentality discussed in the final report and engage the community in an honest dialogue about protecting citizens.<sup>333</sup> This needs to be a collaborative partnership capable of producing meaningful conversations and potential solutions to problems.<sup>334</sup> Secondly, the final report from the task force emphasized numerous policy safeguards.<sup>335</sup> They included transparency in the decision-making process, controlling use of discretion by law enforcement personnel, collecting statistical data, establishing a professional organizational culture, and providing training to eliminate explicit and implicit biases.<sup>336</sup> All of these characteristics are important for the strategy of highway interdiction operations to be viewed as a legitimate strategy by the community. Lastly, the work of the task force has continued with two initiatives that can help implement policy safeguards for highway interdiction, the Office of Policing Practices and Accountability Initiative and the Police Data Initiative.<sup>337</sup>

All of the implementation strategies previously discussed in this section address law enforcement operations from the entirety of the profession. Only the DHE initiative is focused specifically on law enforcement personnel responsible for conducting highway interdiction operations. Additionally, many of the law enforcement organizations with highway interdiction program already participate in a collaborative partnership with the DHE initiative, sharing information to enhance operations. For those reasons, it is recommended that the DHE initiative continue to embrace the responsibility for highway interdiction conducted on the highways of the United States. The focus of the DHE initiative should to be expanded from operational considerations to incorporate supervisory oversight when addressing the aspects identified by the President's Task Force on 21st Century Policing. The DHE is already managed through the HIDTA program within the Office of National Drug Control Policy for the Executive Office of

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<sup>333</sup> President's Task Force on 21st Century Policing, *Final Report*, 1.

<sup>334</sup> *Ibid.*, iii–iv.

<sup>335</sup> *Ibid.*, 9–18.

<sup>336</sup> *Ibid.*

<sup>337</sup> U.S. Department of Justice, *President's Task Force on 21st Century Policing*, 10.

the President.<sup>338</sup> The ongoing efforts of the President's Task Force can easily be coordinated with the DHE initiative to address concerns by the minority community involving highway interdiction to improve transparency and trust. The DHE initiative has already demonstrated a willingness to implement policy safeguards specifically designed for highway interdiction through the creation of the code of conduct.<sup>339</sup>

Another important characteristic for the DHE initiative is its willingness to address critical issues confronting the strategy of highway interdiction. Each regional HIDTA has a director for the DHE initiative who communicates with leadership of interdiction programs within his or her area of responsibility. As a result of the collaborative partnerships previously established, the DHE initiative is able to understand the complexities of highway interdiction at the same level the DOJ Civil Rights Division comprehends the critical issues confronting the police departments in Ferguson and Baltimore. This extensive comprehension will allow the DHE initiative to identify policy safeguards specifically designed for highway interdiction, which will help maintain the view of the strategy as legitimate. The national platform will also assist with the distribution of information to establish a national standard for best practices and potentially develop an accreditation process for highway interdiction.

Annually, the DHE initiative can convey essential policy safeguards for highway interdiction programs throughout the nation as leaders gather for to participate in the national conference hosted by the initiative. In the past, the DHE initiative has provided an opportunity for the ACLU and other advocacy groups to speak at the national conference to communicate concerns and address issues. The DHE initiative is an existing program already possessing substantial resources within the HIDTA budget for fiscal year 2017. Incorporating the ability to champion policy safeguards for highway interdiction is a natural fit and could be easily accomplished.

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<sup>338</sup> Executive Office of the President, *High Intensity Drug Trafficking Areas*, 6.

<sup>339</sup> O'Harrow, Jr., "Federal Officials Issue New Code."

### 3. Evaluation of Policy Safeguards

Policy safeguards possess comprehensive characteristics and may not have the same desired effect of improving transparency for justifying law enforcement action as perceived by the community the organization serves. Additionally, the DHE initiative does not possess compulsory authority over law enforcement organizations conducting highway interdiction operations throughout the nation. Therefore, the leadership of law enforcement organizations will need to evaluate the effectiveness of policy safeguard by deploying a business process simulation with “as-is” or “to-be” models.<sup>340</sup> Researcher Andrew Greasley describes this process as incorporating four steps involving the creation of a process map, evaluation of the process (as-is), developing modification to the process (to-be), and implementation of needed modifications.<sup>341</sup>

The process map is a simplified analysis of how work is accomplished and how the different aspects of a task are connected to one another (see Figure 6).<sup>342</sup> The evaluation of the process in step two provides leadership with an understanding of the current situation and how the process affects factors such as performance for determining value to the organization.<sup>343</sup> Step three is an exploration into how things could be changed impacting the overall process through modifications.<sup>344</sup> The final step allows for implementation using the previous step as a blueprint for needed modifications if the decision requires the organization to transition from the “as-is” model to the “to-be” model.<sup>345</sup>

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<sup>340</sup> Andrew Greasley, “Using Business-process Simulation within a Business-process Reengineering Approach,” *Business Process Management Journal* 9, no. 4 (2003): 408–416, doi:10.1108/14637150310484481.

<sup>341</sup> Ibid., 411–415.

<sup>342</sup> Ibid., 412.

<sup>343</sup> Ibid., 413–414.

<sup>344</sup> Ibid., 415.

<sup>345</sup> Ibid., 415–416.

Figure 6. Decision Making Process for Law Enforcement<sup>346</sup>

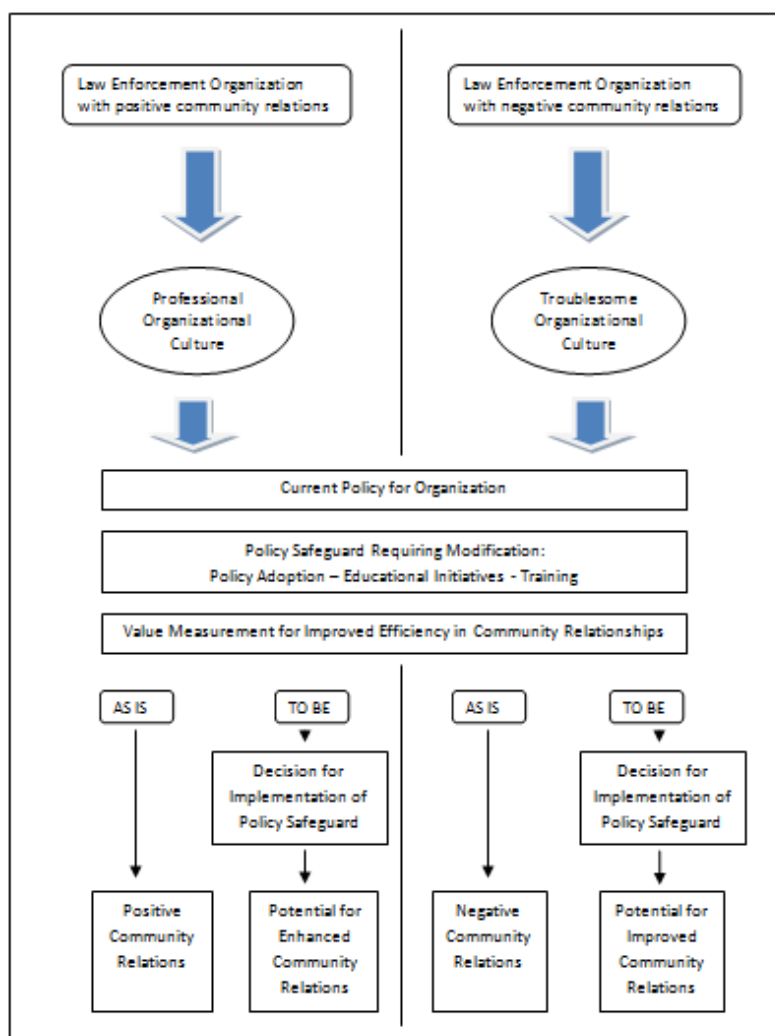


Figure 6 illustrates the decision-making process for law enforcement organization with a professional or troublesome organizational culture using the “as-is” or “to-be” process when deciding if a policy safeguard should be implemented. The leadership of the organization will review how things work and identify the different aspects connected to the relationship with the community.<sup>347</sup> The next step requires the leadership to review the organization’s relationship with the community for determining if the organization

<sup>346</sup> Adapted from: U.S. Department of Justice, *Implementing a Body-Worn Camera*.

<sup>347</sup> Greasley, “Using Business-process Simulation,” 413–414.

possesses a professional or troublesome core organizational culture.<sup>348</sup> In this example, the modifications required to implement a policy safeguard is measured against the value for that safeguard to affect community relations.<sup>349</sup> If the organizational leadership perceives value in the policy safeguard, then the policy safeguard will mostly likely be implemented as “to-be.”<sup>350</sup>

An organization with a professional organizational culture can enhance its community relationship by implementing policy safeguards designed to improve transparency and trust.<sup>351</sup> An organization with a troublesome organizational culture can also improve their relationship by implementing the policy safeguard designed to enhance transparency and trust.<sup>352</sup> As reported by the President’s Task Force 21st Century Policing, these characteristics are essential for law enforcement to be viewed as legitimate by members of the community.<sup>353</sup> Conversely, if the value of the policy safeguard is valued less than the modifications, then the policy safeguard will most likely not be implemented, and the organization will maintain the “as-is” model.<sup>354</sup>

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<sup>348</sup> Ibid., 415.

<sup>349</sup> Ibid.

<sup>350</sup> Ibid., 415–416.

<sup>351</sup> U.S. Department of Justice, *Implementing a Body-Worn Camera*, 19–21.

<sup>352</sup> Ibid.

<sup>353</sup> President’s Task Force on 21st Century Policing, *Final Report*, 1.

<sup>354</sup> Greasley, “Using Business-process Simulation” 415–416.

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## VI. CONCLUSION

This thesis was designed to answer the question as to whether or not policy safeguards could help minimize improper practices by law enforcement personnel conducting highway interdiction operations. Law enforcement organizations have not created policy safeguards for highway interdiction from a strategic plan anticipating the deployment of resources to conduct operations. In fact, law enforcement organizations have created many of the policy safeguards retroactively and implemented as a mechanism to mitigate identified problems with the strategy of highway interdiction, such as complaints of police misconduct or the public's perception of unfair law enforcement practices.

The researcher conducted a review of the research indicating that supervision of highway interdiction programs is being done differently throughout the country. Figure 2 illustrates the vast disparity existing between the state police organizations participating in the focus group. State police organization no. 6 scored a rating of 36 points out of a potential score of 96 points. Five other state police organizations had a rating in the range of 40–49 points. Then, the point range increased substantially with three state police organizations accumulating at least 59 to 66 points. In addition, two state police organizations scored a rating of 71 points or higher with the top rating at 74 points. The vast difference in the point range is evident of the inconsistent level of implementation among the 11 state police organizations participating in the focus group. None of the state police organizations have yet fully implemented the policy safeguards identified in the policy reviews and focus group discussions.

### A. RESULTS AND FINDINGS

Personnel complaints are one of the mechanisms that law enforcement organizations utilize to identify inappropriate behavior when personnel interact with the public.<sup>355</sup> This thesis focuses in the area of three categories for personnel complaints, racial profiling, illegal searches, and rudeness. Figure 3 illustrates the relatively low

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<sup>355</sup> International Association of Chiefs of Police, *Building Trust*, 17.

number of total personnel complaints filed against personnel assigned to state police highway interdiction programs in comparison to the remaining members of the organization. State police organization no. 7 had the highest number of complaints at 10 for personnel assigned to its highway interdiction program while the rest of the organization had a total number of 114. It should be noted that state police organization no. 5 actually submitted data for the period of 2013–2016 and did not reach a total of 10 complaints. State police organization no. 8 did not have any complaints filed against personnel conducting highway interdiction operations and the rest of the organization had a relatively low number of 14 complaints. This phenomenon is partially explained by the requirements for establishing a complaint as opposed an individual simply seeking clarification of a situation, as discussed in Chapter IV.

Although it is important for leadership of law enforcement organizations to understand the number of complaints filed against personnel assigned to the organization's highway interdiction program, the low number of complaints filed does not necessarily convey the relative information for an overall awareness of the situation. All of the state police organizations participating in the focus group had less than five percent of the personnel assigned to their highway interdiction program. Hence, the expectation would be a lower number of personnel complaints filed annually.

A comparative analysis is required between the relationship in the totality of policy safeguards implemented and the number of personnel complaints filed in the state police organizations participating in the focus group. Table 11 illustrates the number of complaints per individual in the organization compared to the number of complaints for each individual specifically assigned to highway interdiction programs. Only two of the state police organizations had a lower number for complaints per individual assigned to the organization's highway interdiction program when compared to the rest of the organization. Additionally, each of the two organizations also had at least 59 points associated with policy safeguard implementation. The state police organizations with 49 points or lower all had a higher number of personnel complaints per individual assigned to the highway interdiction program when compared to individuals not assigned.

When examining the total points for the implementation of policy safeguards, the largest gap in implementation is between the state police organizations with 59 points and state police organizations with 49 points. The gap is 10 points and is not duplicated at any other level in the implementation process. The gap also represents the level in which the highway interdiction programs begin to surface with a lower number of personnel complaints per individual than the rest of their organization. The implementation of policy safeguards associated with conducting highway interdiction might contribute to the effectiveness of highway interdiction by minimizing the number of personnel complaints filed against personnel performing enforcement operations. This phenomenon is not conclusive. One of the state police organizations with 66 points also had a higher number of complaints per individual for personnel assigned to its highway interdiction program.

When examining the percentages for the implementation of policy safeguards in Table 9, the two state police organizations (no. 4 and no. 8) had a lower number of personnel complaints per individual assigned to the organization's highway interdiction program and were the only organizations with a least six categories rated medium to high for implementation. They were also the only two organizations that provided personnel complaint information with a least three categories and scored 100 percent on implementation rating.

Through this analysis, the benefits of implementing policy safeguards can be supportive for assisting the strategy of highway interdiction although not conclusive. State police organization no. 3 had five categories rated medium to high for implementation, including four rated at high implementation. The rating for organization no. 3 also only missed the medium rating by one percentage point associated with the implementation of responses to request for vehicle searches. State police organization no. 3 had more categories rated at high than state police organization no. 8. Thus, simply implementing policy safeguards in this fashion will not guarantee a lower number of personnel complaints per individual for the law enforcement organization's highway interdiction program. Table 11 provides an overview of the three ratings provided for

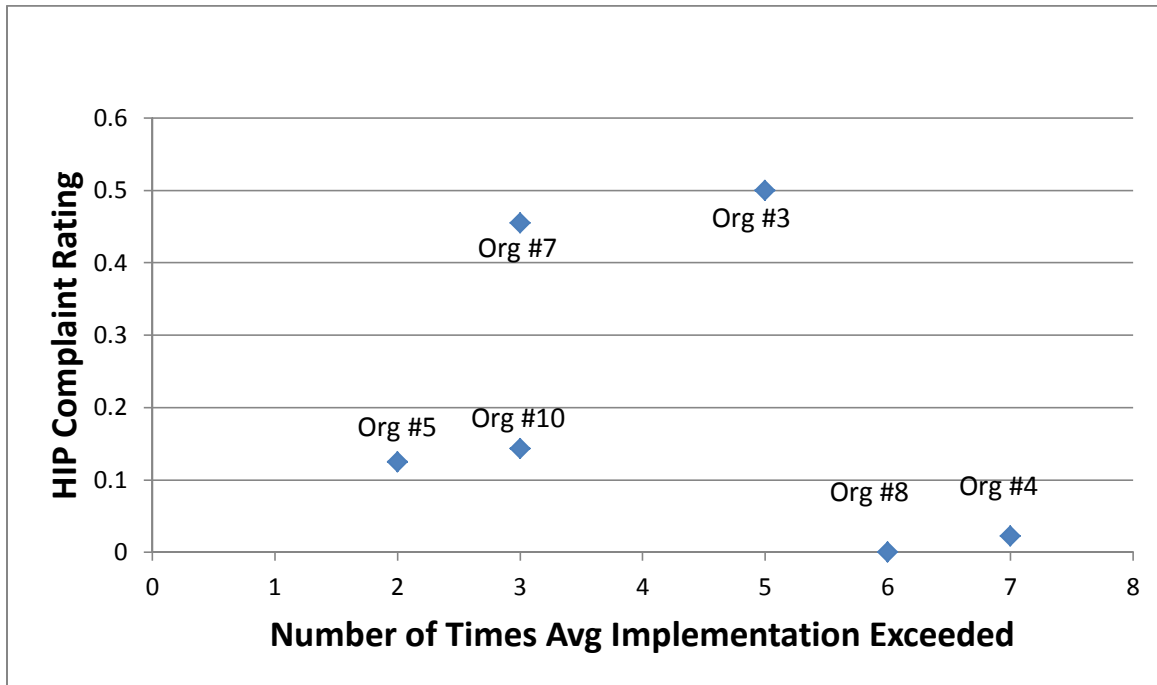
each state police organizations that furnished personnel complaint information for this study.

Table 11. Combined Ratings for the State Police Organizations

	Policy Safeguard Rating	Complaint Rating		Implementation Rating		
		HIP	Non-HIP	H	M	L
No. 3	66	.500	.076	4	1	2
No. 4	71	.022	.064	4	2	1
No. 5	40	.125	.073	1	1	5
No. 7	47	.455	.120	2	1	4
No. 8	59	.000	.010	3	3	1
No. 10	49	.143	.055	2	3	2

A stronger argument for the benefits of implementing policy safeguards can be achieved by analyzing the number of times a state police organization exceeded the average for policy safeguard implementation by the state police organizations participating in the focus group. Specifically, the average for each of the seven major categories of policy safeguards as outlined in Table 9. State police organization no. 4 was the only organization to exceed the average implementation in all seven major categories, while state police organization no. 8 exceeded the average six times. State police organization no. 3 only exceeded the average five times while the remaining organizations that provided data for personnel complaints were only able to achieve this standard two or three times. State police organizations exceeding the average implementation of policy safeguards at least six times were able to achieve a HIP complaint rating of less than .025 complaints per individual assigned to the organizations highway interdiction program as illustrated in Figure 7.

Figure 7. Safeguard Implementation for Full Set versus HIP Complaint Rating



State police organization no. 3 exceeded the average implementation five times but still has a high HIP complaint rating. This phenomenon can be partially explained by the relatively small number of personnel assigned to the highway interdiction program for state police organization no. 3, which was the smallest program in the study. The second smallest highway interdiction program in the study was slightly less than three times bigger than state police organization no. 3. Therefore, a single complaint of police misconduct will significantly impact state police organization no. 3 as compared to the remaining five state police organizations, which have larger highway interdiction programs.

There are numerous limitations when discussing personnel complaints and determining the legitimacy of highway interdiction as a law enforcement strategy. Five of the state police organizations participating in the focus group were not able to produce statistical data for personnel complaints filed against personnel assigned to the highway interdiction program in their organization. The six state police organizations that produce the statistical information had to generate the information by request for this thesis. It is

apparent that the information is not readily available nor regularly reviewed by supervision of highway interdiction programs. This void creates a lack of situational awareness for supervision regarding the overall number of personnel complaints generated against personnel assigned to the highway interdiction program.

## **B. EVALUATION FOR THE FEASIBILITY OF THE IMPLEMENTATION PLAN**

A component of the President's Task Force on 21st Century Policing was to "promote effective crime reduction while building public trust."<sup>356</sup> Although not conclusive, the implementation of policy safeguards for highway interdiction operations can assist to achieve that goal. Highway interdiction operations are capable of producing tangible results through arrests of individuals engaged in criminal activity, such as terrorism, distribution of dangerous drugs, and human trafficking. State police organizations, such as no. 4 and no. 8 studied in this thesis, have produced lower number of personnel complaints per individual assigned to their highway interdiction program as compared to the rest of their organization.

A weakness of the policy safeguards is the manner by which most of personnel complaints were created. The majority of the policy safeguards were created to address specific problems, such as accusations of racial profiling and police misconduct, as opposed to being part of a national strategy to identify and arrest individuals engaged in significant crimes. Absent of guidance from a national strategy perspective, each law enforcement organization engaging in highway interdiction is developing policy safeguards on its own for supervising its program. This situation has resulted in a disparity for the level of implementation of policy safeguards by law enforcement organizations deploying resources conducting highway interdiction operations. Thus, the building of public trust in the strategy of highway interdiction remains problematic as individuals in the community question tactics being used by law enforcement personnel.

The research associated with this thesis highlights the need for law enforcement organizations to reduce the disparity in implementation of policy safeguards for law

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<sup>356</sup> U.S. Department of Justice, *President's Task Force on 21st Century Policing*, 1.

enforcement organizations conducting highway interdiction operations. The current situation makes it difficult for researchers to definitively identify the impacts of policy safeguards on the strategy of highway interdiction. This thesis recommends that HIDTA's DHE initiative under the ONDCP champion the cause for supervision of highway interdiction programs through the establishment of necessary minimum standards for policy safeguards to guide the actions of personnel. Specifically, the DHE initiative must affect the core values of law enforcement organizations deploying personnel conducting highway interdiction operations, as specified in Chapter V, to ensure organizations embrace a professional organizational culture. The DHE initiative, in a collaborative partnership with community leaders and leadership of highway interdiction programs, can provide the neutral perspective needed for open and honest conversation while still understanding the technical aspects associated with specialized units conducting highway interdiction. The standardization of policy safeguards for highway interdiction programs throughout the country will help establish more transparency and understanding of tactics used by personnel to identify and minimize the negative effects of criminal activity.

On July 12, 2016, President Barack Obama spoke at the memorial service for five Dallas police officers who were killed in the line of duty. He stated,

Our entire way of life in America depends on the rule of law; that the maintenance of the law is a hard and daily labor; that in this country, we don't have soldiers in the streets or militias setting the rules. Instead, we have public servants, police officers.<sup>357</sup>

The national dialogue started by the President's Task Force on 21st Century Policing was the catalyst to initiate a conversation between law enforcement leaders and the community they serve concerning acceptable tactics for enforcing the laws of this nation. The DHE initiative is the instrument to achieve that goal.

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<sup>357</sup> White House, "Remarks by the President at Memorial Service for Fallen Dallas Police Officers," press release, July 12, 2016, <https://www.whitehouse.gov/the-press-office/2016/07/12/remarks-president-memorial-service-fallen-dallas-police-officers>.

### **C. OBJECTIONS AND SUGGESTIONS FOR ADDITIONAL RESEARCH**

The policy safeguards implemented by law enforcement organizations deploying personnel to conduct highway interdiction operations were designed from the perspective of law enforcement. As articulated in Chapter I, criticism of highway interdiction operations includes allegations of racial profiling, illegal searches, and other forms of police misconduct. More research is needed on the impact of policy safeguards contributing to the effectiveness of highway interdiction as a legitimate strategy. Something is happening in two state police organizations at the level of implementation for a rating of at least 59 points that has allowed them to produce lower number of personnel complaints per individual against members conducting highway interdiction operations. This phenomenon is supported by the realization that those organizations also had six categories for implementation of policy safeguards at the medium to high rating and exceeded the average implementation at least six times. Simply implementing policy safeguards is not a guarantee for lower number of personnel complaints per individual associated with complaints for personnel conducting highway interdiction operations, as demonstrated by state police organization no. 3.

The latest statistics from the Bureau of Justice Statistics reported the law enforcement in the United States stopped 21.2 million vehicles in 2011.<sup>358</sup> At first glance, the minimal number of complaints would suggest that the problem associated with highway interdiction operations is minor; however, the frustrations articulated by civil liberty organizations and members of the minority community tell us otherwise. Law enforcement organizations do not necessarily have a mechanism that can capture the true extent of the problem specific to highway interdiction operations.

The focus group was restricted to state police organizations with highway interdiction programs. Larger organizations, such as state police, tend to have more policy and procedures established to guide the actions of personnel conducting enforcement operations. There are more than 18,000 police departments in the United

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<sup>358</sup> Langton and Durose, *Police Behavior*, 3.

States, with the most police departments employing 10 or fewer police officers.<sup>359</sup> Smaller police departments were not included in the study, and their inclusion might have affected the ratings for implementation in comparison to the number of personnel complaints received.

Policy safeguards for highway interdiction beyond the knowledge of the focus group were not included in this study. Participation in the focus group was solicited; unfortunately, not all of the organizations responded. This situation created a gap in knowledge that could have expanded on the number of safeguards implemented to guide the actions of personnel conducting highway interdiction operations. Although the research conducted an extensive literature review, not all aspects of supervising highway interdiction programs were captured for review and discussion by the focus group.

Additional research must be conducted in the area of calculating hit rates for determining the effectiveness of highway interdiction operations. Currently, the literature available of the topic only uses the seizure of contraband as a measurement for a successful stop. As we have discovered, transparency associated with the actions of law enforcement personnel performing enforcement operations is important. It is just as important to recognize successful highway interdiction stops that discovered hidden compartments for smuggling contraband, however, empty at the time of the traffic stop. Law enforcement personnel should not view those stops as a negative interaction with the public. Rather, they should view these stops as opportunities for good police work to identify individuals engaging in criminal activity. Transparency in defining hit rates for successful traffic stops is important to properly calculate the positive results from personnel searching vehicles.

Supervision of highway interdiction programs at the national level has not been thoroughly discussed from a strategic perspective. This situation has created a gap in awareness of the policies being implemented by other law enforcement organizations. Several of the state police organizations participating in the focus group have begun implementing additional policy safeguards identified in Chapter III. As the additional

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<sup>359</sup> U.S. Department of Justice, *National Sources of Law Enforcement*, 3.

policies get implement, research needs to be conducted to determine the impact on the number of personnel complaints filed against personnel. Hopefully, the implementation of additional policy safeguards will help identify a better standard for determining the effectiveness of policy safeguards to improve the strategy of highway interdiction operations.

## **APPENDIX A. FOCUS GROUP INTERVIEW QUESTIONS**

### **Topic 1**

By policy, does your organization mandate audio and visual recording of traffic stops? If so, does a supervisor routinely review the video recordings to identify potential violations of department policy, procedures, or applicable laws? What unintended consequences or problems have surfaced from the reviews? Is the supervisor reviewing recordings directly involved with highway interdiction operations? Are all traffic stops reviewed?

### **Topic 2**

By policy, are personnel conducting highway interdiction operations required to document justification for actions undertaken during the traffic stop? For example, why they exercised discretion to ask for consent to search a vehicle? If so, how is the information documented? Does a supervisor routinely review the documentation? Is the supervisor reviewing the documentation directly involved with highway interdiction operations? What unintended consequences have emerged from the process?

### **Topic 3**

Are personnel conducting highway interdiction authorized to conduct consensual searches of vehicles? By policy, does your organization place limitations on consensual searches of vehicles? If so, what limitations are in place?

### **Topic 4**

By policy, does your organization mandate the collection of statistical data associated with the racial composition of drivers stopped? If so, does a supervisor routinely review the statistical data? What problems have been identified with the process? Is the supervisor reviewing statistical information directly involved with highway interdiction operations? What information is being obtained from the review? Are internal comparisons conducted with other members performing highway interdiction operations? Have you encountered any unintended consequences?

**Topic 5**

By policy, does your organization calculate the percentage of traffic stops resulting in a seizure of contraband or an arrest for criminal activity commonly referred to as “hit rates”? What qualifies as a successful hit? When calculating the hit rate, are probable cause searches separated from consensual searches? If so, does a supervisor routinely review the statistical data? Is the supervisor reviewing the calculations directly involved with highway interdiction operations? What information is being obtained from the review?

**Topic 6**

By policy, are complaints of police misconduct, racial profiling, or rudeness documented and thoroughly investigated? If so, is the investigation conducted by individuals independent of the highway interdiction program? Are complaints reviewed by supervision assigned to the highway interdiction program for endorsement/comment?

**Topic 7**

By policy, how are personnel selected for assignment to specialized interdiction teams? What criteria are used? Are personnel mandated to attend highway interdiction training? If so, are the training programs standardized for all personnel assigned to specialized highway interdiction teams? Are personnel required to attend additional cultural diversity/awareness training? Are personnel required to attend additional legal courses?

**Topic 8**

By policy, are criminal investigative reports reviewed by a supervisor for compliance with policy, procedures, and applicable laws? How many layers of supervision review the reports? Are the reviewing supervisors specially trained in highway interdiction? Do supervisors attend training specifically designed for supervision of highway interdiction operations? What problems have been identified through this process?

**Topic 9**

By policy, are highway interdiction operations directly supervised? What is the span of control for each supervisor associated with the number of individuals managed? How does the ratio compare to other operations within your department?

**Topic 10**

What other techniques does your department use to avoid problems with highway interdiction operations? Did the techniques result in unintended consequences? By policy, does your organization have any additional policy safeguards that have not previously been discussed?

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## APPENDIX B. POLICY SAFEGUARD SCORING

<b>State Police Agencies</b>	1	2	3	4	5	6	7	8	9	10	11
<b>Audiovisual Recordings of Traffic Stops</b>	3	3	3	3	3	3	3	3	3	3	3
Mandated Review by Supervision	3	3	3	3	3	0	3	3	3	3	3
Monthly Reviews			3	3	3			3	3		
Quarterly Reviews	2						2			2	
Sporadic Reviews		1				1					1
No Reviews											
Reviews Conducted by Interdiction Supervisor	0	0	3	3	3	3	3	3	3	0	3
Review All Traffic Stops	0	0	0	0	0	0	3	0	0	0	0
Review One Stop with Vehicle Search or Canine Deployment	0	0	3	0	0	0	3	0	0	3	0
<b>Points</b>	<b>8</b>	<b>7</b>	<b>15</b>	<b>12</b>	<b>12</b>	<b>7</b>	<b>17</b>	<b>12</b>	<b>12</b>	<b>11</b>	<b>10</b>
<b>Percentage of Implementation</b>	<b>44</b>	<b>39</b>	<b>83</b>	<b>67</b>	<b>67</b>	<b>39</b>	<b>94</b>	<b>67</b>	<b>67</b>	<b>61</b>	<b>56</b>
<b>Transparency by Documenting Justification of Personnel Action</b>	3	3	3	3	3	3	3	3	3	3	3
All Vehicle Searches or Consensual Requests	3	0	3	3	0	0	0	3	3	3	3

<b>State Police Agencies</b>	1	2	3	4	5	6	7	8	9	10	11
Reviews Conducted by Supervisor	3	3	3	3	3	3	3	3	3	3	3
Reviews Conducted by Interdiction Supervisor	0	0	3	3	0	3	0	3	3	0	3
Points	9	6	12	12	6	9	6	12	12	9	12
Percentage of Implementation	75	50	100	100	50	75	50	100	100	75	100
<b>Criminal Investigative Reports Completed</b>	3	3	3	3	3	3	3	3	3	3	3
Reviews Conducted by Supervisor	3	3	3	3	3	3	3	3	3	3	3
Reviews Conducted by Interdiction Supervisor	0	3	3	3	3	3	3	3	3	3	3
Points	6	9	9	9	9	9	9	9	9	9	9
Percentage of Implementation	67	100	100	100	100	100	100	100	100	100	100
<b>Document Response to Requests for Vehicle Searches</b>	3	3	3	3	3	3	3	3	3	3	3
By Policy, Must Have at Least Reasonable Suspicion to ask for Consent	0	3	0	3	0	3	0	3	0	3	3
Points	3	6	3	6	3	6	3	6	3	6	6
Percentage of Implementation	50	100	50	100	50	100	50	100	50	100	100
<b>Racial Statistical Data Collected by</b>	3	3	3	3	0	0	0	3	3	3	3

<b>State Police Agencies</b>	1	2	3	4	5	6	7	8	9	10	11
<b>Personnel</b>											
Statistical Data Reviewed by Supervision	3	0	3	3	0	0	0	3	3	0	3
Statistical Data Reviewed by Supervision with Interdiction experience	3	0	3	3	0	0	0	3	3	0	3
Internal Benchmark Comparison Completed	3	0	3	3	0	0	0	0	3	0	3
Academic Institutional Review of Statistical Data	0	0	0	0	0	0	0	0	0	0	0
Points	12	3	12	12	0	0	0	9	12	3	12
Percentage of Implementation	80	20	80	80	0	0	0	60	80	20	80
<b>Calculates Hit Rates of Personnel</b>	0	0	0	3	0	0	0	0	0	0	3
Established Criteria for Defining a Hit	0	0	0	0	0	0	0	0	0	0	3
Separate Probable Cause and Consent for Hit Rates	0	0	0	3	0	0	0	0	0	0	3
Hit Rates Reviewed by Supervision	0	0	0	0	0	0	0	0	0	0	3
Hit Rates Reviewed by Supervisor with Interdiction Experience	0	0	0	0	0	0	0	0	0	0	3
Points	0	0	0	6	0	0	0	0	0	0	15

<b>State Police Agencies</b>	1	2	3	4	5	6	7	8	9	10	11
Percentage of Implementation	0	0	0	40	0	0	0	0	0	0	100
<b>Identified Procedure to Select Personnel</b>	0	3	3	3	3	0	3	3	3	3	3
Over 3 Years		3	3				3				
2–3 Years				2		2		2	2	2	
Under 2 Years	1				1						1
Personnel Receive Specialized Interdiction Training	3	3	3	3	3	3	3	3	3	3	3
Mandatory Standardized Training Program of Courses	0	0	3	0	0	0	0	0	3	0	0
Additional Cultural Diversity Training	0	0	0	3	0	0	3	0	0	0	0
Additional Legal Courses	3	0	3	3	0	0	0	0	0	3	0
Probationary Period	0	0	0	0	3	0	0	3	0	0	3
Points	7	9	15	14	10	5	12	11	11	11	10
Percentage of Implementation	33	43	71	67	48	24	57	52	52	52	48
<b>Total Points</b>	<b>45</b>	<b>40</b>	<b>66</b>	<b>71</b>	<b>40</b>	<b>36</b>	<b>47</b>	<b>59</b>	<b>59</b>	<b>49</b>	<b>74</b>

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